Supreme Court of the United States

OCTOBER TERM, 1948

No. 461.

ANIBAL MONAGAS Y DE LA ROSA, *et al.*, HEIRS, etc., *et al.*,
Petitioners

v.

NEFTALI VIDAL-GARRASTAZU,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF

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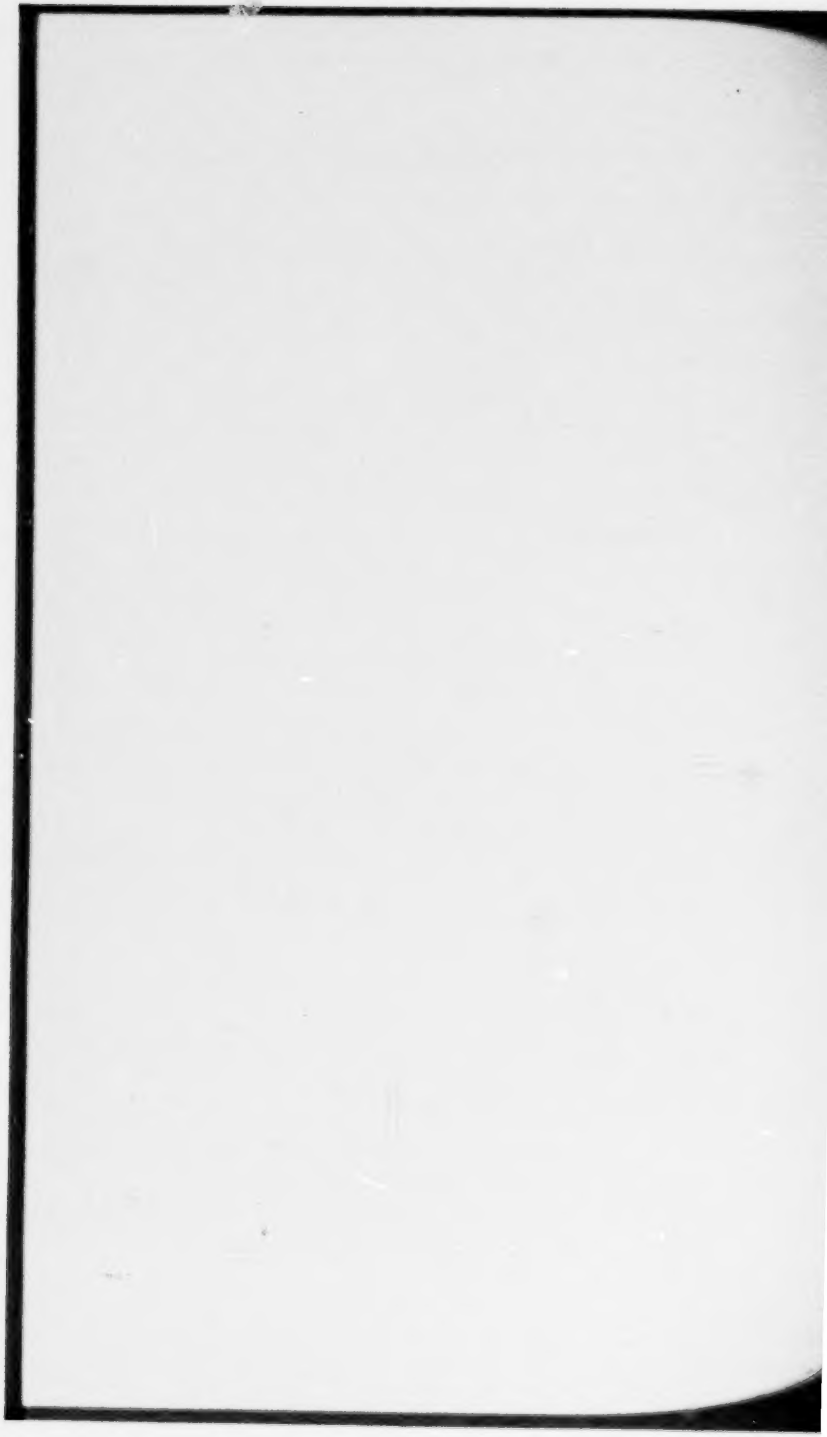

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v.

NEFTALI VIDAL-GARRASTAZU,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE U. S. COURT OF APPEALS, FIRST CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners Aníbal, Rebecca, and Eva Monagas de la Rosa, and Jorge, Giselda and Diego García-Monagas, as heirs duly substituted below in lieu of Juan A. Monagas, deceased (Supp. R. 565), pray for a writ of certiorari to review a judgment of the Court of Appeals for the First Circuit, entered October 4, 1948 (Supp. R. 565).[1]

[1] The printed record used by the Court of Appeals below will be designated, "(R.)"; and the additional printed matter showing subsequent proceedings in that Court including its opinion and judgment, will be referred to as "(Supp. R.)."

Jurisdiction

The jurisdiction of this Honorable Court is invoked under *Section 1254 of the new Title 28, United States Code Judiciary and Judicial Procedure, effective September 1, 1948,* providing that cases in the courts of appeal may be reviewed by writ of certiorari granted upon the petition of any party to any civil case (see also 43 Statutes 938, 28 U. S. C. A. 347).

The judgment of the Court of Appeals for the First Circuit was entered October 4, 1948 (Supp. R. 565), and a rehearing denied November 19, 1948 (Supp. R. 566). The time within which to apply for a writ of certiorari to this Court will expire on February 18, 1948 (§ 2101(c), new Title 28, United States Code Judiciary and Judicial Procedure, effective September 1, 1948).

Statement of the Case

Upon February 9, 1905, a three-partner agricultural firm was organized by Juan A. Monagas, José Arturo Monagas and Ramiro Vidal Martínez, respondent's father, to operate under the firm name of *Monagas & Vidal,* wherein the said members were to share equally (R. 75 bot.—76).

Ramiro Vidal Martínez, respondent's ancestor and former member of *Monagas & Vidal,* died on September 27, 1921 (R. 76 mid., 176 top, 478 mid.). But three years prior to his decease, i.e., upon 27 September 1918, an action No. 6889 was started in the district court of Mayaguez, Puerto Rico (R. 430-453), by José Mora claiming the amount of a promissory note executed by said Ramiro Vidal Martínez (R. 430). In this suit judgment was rendered against Vidal Martínez, dated February 4, 1919, which was duly notified to him (R. 436). At the execution

sale in No. 6889, Ramón E. Beauchamp acquired, and he later conveyed for value to Juan A. Monagas, petitioners' ancestor, all title and interest of Ramiro Vidal and his heirs in *Belvedere Farm* (R. 249, 256 top, 448-449). Monagas bought from Beauchamp for a cash price of $1,602 (R. 258 mid.), subject to a prior encumbrance on the lands of $41,480 (R. 258 top, 112 mid.).[2] This transfer was spread upon the land Registry books (R. 260). Respondent and his mother, known as Vidal's heirs, upon July 16, 1923 (R. 452 mid.), *voluntarily and generally appeared "by substitution"* in No. 6889, through two motions (R. 449-452; R. 452 bot.). Respondent and his mother attempted to set aside their substitution in that case in lieu of their predecessor Ramiro Vidal Martínez, as well as all subsequent proceedings leading to the execution sale. But Vidal's heirs' appearance was not limited to challenging the court's jurisdiction on the subject-matter or over their persons. They further sought relief on the two motions' supposed merits. Respondent's first motion was predicated on alleged *violation of certain provisions of the local Code of Civil Procedure* (R. 451).[3]

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[2] In Puerto Rico, the levy of an attachment is subject to prior encumbrances or credits. *La Sociedad etc.* v. *Rossy*, 17 P. R. R. 77; *Banco de Puerto Rico* v. *Solá e Hijos*, 26 P. R. R. 57; *Bank of Nova Scotia* v. *Benítez*, 52 P. R. R. 681, syll. 2, 686 mid.

[3] Thus, the insular supreme court's holding, as affirmed by the Court of Appeals below, that supposed violations of certain provisions of the local Code of Civil Procedure (R. 451), as allegedly depriving the Mayaguez court of jurisdiction in the execution proceedings had in No. 6889, *could be reasserted and considered by collateral attack in the present case, is in direct conflict or sheer inconsistency with local law and with at least an important, applicable decision of this United States Supreme Court,* in *Santiago* v. *Nogueras* (Puerto Rican case), 53 L. ed. 989, 992, 214 U. S. 260, where this Hon. Court categorically decided: *"Whether or not the * * * court * * * lost jurisdiction of a cause and of the parties because, in the course of its proceedings, it disregarded certain provisions of the Code of Civil Procedure which were binding upon it, is a question which cannot be raised by collateral attack on its judgment."*

His second motion went so far as to invoke the court's action on questions such as, for instance, the issuance of a cautionary order for the Registry of Property (R. 452 bot.). *Vidal's heirs thus submitted generally to the Mayaguez district court's jurisdiction in said execution proceedings in No. 6889.* Respondent and his mother *did not even take an appeal from the order directing issuance of execution* or attachment in that case.[4] In consequence, the question of the Mayaguez court's jurisdiction to order execution and the levy of attachment in No. 6889, *became res judicata,* binding on parties and privies.[5] Moreover, the validity of execution proceedings in No. 6889 was *duly ratified* through subsequent actions No. 10,416 and 783, as will be hereinafter shown.

In 1924, the Monagas family, petitioners, instituted a suit in the district court of Mayaguez, No. 10,416 (R. 453-

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[4] The *res judicata* rule applies also to one who has appeared specially and moved to dismiss for want of jurisdiction. *Baldwin* v. *Iowa State Traveling Men's Asso.*, 75 L. ed. at page 1246, col. 2 top, 283 U. S. 524.

[5] The insular supreme court's ruling in No. 6889, as affirmed by the Court of Appeals, *is also obviously inconsistent with the fundamental principle,* repeatedly upheld by this highest Court of the Nation, *that res judicata also applies to jurisdictional questions open or decided, whether expressly or tacitly, in prior litigations. Baldwin* v. *Iowa Traveling Men's Asso.*, 75 L. ed. 1244, 283 U. S. 522, 51 S. Ct. 517; *American Surety Company* v. *Baldwin*, 77 L. ed. 232, 239, col. 2 mid.; *Treinies* v. *Sunshine Min. Co.*, 84 L. ed. 85, at page 93, col. 1 mid.; *Stoll* v. *Gottlieb*, 83 L. ed. at page 108, col. 2 mid.; *Chicot Co. Drainage Dist.* v. *Baxter State Bank*, 84 L. ed. 330, syll. 3, page 334, col. 2 bot.; *Windholz* v. *Everett*, 74 F. 2d 834, 836, col. 2 mid.; *Walling* v. *Miller*, 138 F. 2d 629, syll. 7, page 632, col. 2 bot.; *Federal Trade Commission* v. *Pacific etc. Asso.*, 71 L. ed. 535, syll. 6, page 540, col. 1 top; *United States* v. *Cathcard*, 70 F. Supp. 653, 659, col. 2 top; *Marine Transit Corp.* v. *Dreyfuss*, 70 L. ed. 283, syll. 9. The Puerto Rico Supreme Court itself has recently ruled on this point in the same manner. *González Padín Co. Inc.* v. *Tax Court of Puerto Rico*, 67 D. P. R. 222, syll. 5, and at page 228, Spanish edition (*"The* [jurisdictional] *question cannot now be re-litigated even though our original decision on it might have been erroneous"*).

476, Exhibit E), against the heirs of Ramiro Vidal, including respondent here, *praying in part for a declaratory adjudication that the firm "Monagas & Vidal" had been dissolved; that the one-third interest of Vidal's heirs in Belvedere lands, as bought in by Beauchamp at the Judicial sale in No. 6889 and later by him conveyed to Juan A. Monagas, be confirmed in favor of the latter* and finally thus re-entered upon the proper Land Registry, etc. (R. 453, 456 mid. 458). To this complaint, Ramiro Vidal's widow, *pro se* and as mother of Neftalí Vidal, respondent here, *pleaded by admitting its facts and consenting thereto* (R. 460-461). On May 17, 1924, the district court of Mayaguez entered a final judgment for the Monagas in No. 10,416 (R. 462-465). It granted the complaint's prayer (R. 457-458) and specifically adjudged, among other matters, that "as a result of the dissolution of the partnership *Monagas & Vidal* and of the adjudication to the plaintiffs [petitioners here] of the undivided interest to which each is entitled in the proportion stated, the said plaintiffs acquired said shares subject to the encumbrance on the *Belvedere Estate* of the mortgage granted by the partnership 'Monagas & Vidal' * * * for the sum of $20,000 * * * *the defendants, that is, the heirs of Ramiro Vidal Martínez, being relieved of the obligation of paying the said debt.*" Thereupon, the usual writ of execution issued (R. 465-476), and the proper notarial deed, executed by the marshal (R. 260-279, Exhibit 7), was duly recorded (R. 278). Furthermore, Juan A. Monagas, petitioners' ancestor, fully effected the cancellation of the mortgage-lien for $20,000 upon the Belvedere lands (R. 279-283, Exhibit 8), *thus relieving the heirs of Ramiro Vidal, including respondent here, of their liability as provided for by said judgment in No. 10,416* (R. 464 bot.), in conformance with Vidal's widow's sworn consent thereto (R. 461 mid.).

On February 11, 1938, respondent Neftalí Vidal, shortly upon becoming of full age, with his mother the widow

of Ramiro Vidal, filed a new suit No. 783 in the district court of Mayaguez (R. 285-351, Exhibit 10) against the heirs of Ramón E. Beauchamp and the Monagas family, petitioners herein, whereby the present respondent and his mother sought, respecting case No. 6889, to nullify, *not the judgment therein,* but from the substitution of Vidal's privies in that case down to the judicial sale which occurred in that litigation (R. 303); and they further attempted to annul a prior decree favorable to the Monagas in No. 10,416, relying therefor on the very grounds (R. 290 mid., 302) which were now again urged in the case at bar (R. 108-124; 126-142). The Monagas family, petitioners herein, and other codefendants in No. 783, demurred to the complaint therein, among other grounds, because of insufficiency thereof; that it showed upon its face: the prescription of the action to annul prior suits Nos. 6889 and 10,416; *that the proceedings in Nos. 6889 and 10,416 were res judicata and constituted estoppel preventing collateral attack in No. 783; and that Juan A. Monagas, petitioners' ancestor, had acquired prescriptive title by adverse, bona fide possession for over ten years under a good, recorded title* (R. 305-314, 349 bot.—350). In said prior action No. 783, the judgment on demurrer went entirely for the Monagas family and the heirs of Beauchamp (R. 314-350). The Mayaguez court, painstakingly analyzed the complaint in No. 783, as well as the various grounds of demurrer, and it finally adjudged that the said complaint was insufficient; that the action was barred by prescription; *that Juan A. Monagas had acquired title to Vidal's (respondent's predecessor) share in Belvedere farm by adverse possession for more than 10 years* (R. 347 mid.—349 mid.), since the complaint in No. 783 did "not overcome the presumption of just title claimed by Monagas, inasmuch as the irregularities • • • alleged • • • were not sufficient to destroy this presumption" (R. 348 top); *and that the judgments in No. 6889 and No. 10,416, were res judicata and could not be attacked collaterally* (R. 349

mid., 486 near bot.). An appeal taken by Vidal's heirs in No. 783 was dismissed on July 28, 1942, by the Supreme Court of Puerto Rico (R. 350 bot., 481 top; *Vidal v. Monagas,* 60 PRR 763).

On November 16, 1942, respondent started again the present suit No. 4545 in the Mayaguez district court (R. 1-5, 75-80) whereby, after alluding to the alleged existence of Monagas & Vidal, whereof his father Ramiro Vidal Martínez and the Monagas had been members (R. 75 bot.—76), to the fact of his ancestor's death in 1921 (R. 76 mid.), and to the firm's dissolution (R. 78 mid.), respondent repeated his earlier averments as to having succeeded, *as heir of Ramiro Vidal Martínez,* to a one-third interest in the firm (R. 78 bot.), and prayed judgment for its liquidation, the rendition of accounts from and after 1921, the return of any properties or their value, together with mesne profits, as also for the partition and adjudication thereof (R. 79, 482 mid.). In his amended complaint (R. 75), respondent further asserts that among the firm assets is to be found the *Belvedere estate* with 1470 acres of land (R. 77), which the supreme court below said was the only asset in 1924 of Monagas & Vidal (R. 483 top). Among other defenses, *the proceedings in prior cases Nos. 6889, 10,416 and 783 were duly pleaded as conclusive of the issues attempted to be raised anew by respondent* in the instant cause.

Despite the binding and conclusive effect of former judgments in cases Nos. 6889, 10,416 and 783, finally dispositive of the issues unwarrantedly again relitigated herein by respondent, the courts below have passed upon them in this litigation favoring respondent (R. 477-493), in utter disregard of the aforesaid repeated adjudications in favor of the Monagas family, now petitioners. Thereupon, petitioners appealed to the Court of Appeals (R. 537).

On October 10, 1947, respondent's motion to dismiss or affirm under the Court of Appeals' *Rule 39(b)* was

denied (Supp. R. 548), thereby implying that there were patent errors requiring examination and correction.

But later, the judgment of the insular supreme court, dated November 12, 1946 (R. 494) was erroneously affirmed by the Court of Appeals for the First Circuit on October 4, 1948 (Supp. R. 548, 565).

Questions Presented

I. *Regarding prior judgment in No. 10,416 as res judicata herein.* The earlier judgment in case No. 10,416 does not show any absence of evidence therein. On the contrary, it exhibits previous judicial hearing and inquiry (R. 462-465). At any rate, should the Court of Appeals' ruling based on supposed lack of evidence be allowed to trench upon the binding effect, as *res judicata,* of judgment in prior case No. 10,416, in the face of controlling decisions by this Court and even by the insular Supreme court itself, such as, among others, *Heiser* v. *Woodruff,* 90 L. ed. 971, syll. 8, 327 U. S. 726, and *Amadeo* v. *Compañía del Toa,* 58 PRR 756, syll. 2, and at page 711 mid.? The Court of Appeals has also sanctioned a patently erroneous doctrine: that a *special authorization* must be previously obtained from an insular district court for a parent (respondent's mother) to consent to a judicial decree, like in action No. 10,416. Should such ruling be allowed to stand when it clearly does violence to well-settled local statutory law and decisions to the effect that *parents, in exercise of their plenary right of patria potestas, fully represent minors in adversary proceedings, without need of any previous judicial authorization,* and that provisions of the local special act relative to *ex parte applications* for judicial authorization, concerning alienation of minors' property, are *inapplicable to interparte court proceedings?* Are not infants, according to a vast body of Continental and local

precedents, bound by consent judgments in actions where they are fully represented by their parents, *a fortiori* when, as happened in case No. 10,416, complying with an express condition in judgment therein, deceased Juan A. Monagas, petitioners' ancestor, discharged a $20,000 mortgage-lien to relieve respondent and his mother from liability thereunder? Does not the annulment of judgment in No. 10,416, under the foregoing circumstances, additionally entail a grave miscarriage of justice? Finally, having the insular supreme court freely conceded, as acknowledged by the Court of Appeals (Supp. R. 557), that judgment in case No. 10,416 *"dealt with the same cause of action now before us, and concerned the same parties" and that if it was valid "it decided the issue adversely to the plaintiff [respondent]"* (Supp. R. 487 top), may such prior consent-judgment in No. 10,416 be attacked collaterally, in direct conflict with firmly established local law and authorities, as well as federal precedents?

II. *Respecting the res judicata character of judgment in prior case No. 783.* Having sought to attain the same object by substantially the same means as in prior litigation No. 783, wherein he was defeated, and where an appeal by him was dismissed by the insular supreme court without respondent seeking any further review in said case No. 783, either by the Court of Appeals or in this Court, can respondent subsequently maintain the present action in the face of this Court's applicable decision in *Angel* v. *Bullington,* 91 L. ed. 833, syll. 8, page 837, 330 U. S. 183, 189, even followed by the insular supreme court itself in *González Padín Co. Inc.* v. *Tax Court of Puerto Rico,* 67 DPR 222, syll. 5, at page 228, Spanish edition? Is not respondent to be held bound as having concluded his litigation as effectively as though he had proceeded through the highest tribunal available to him? Having the Court of Appeals acknowledged in the present case

(Supp. R. 560 bot.), with reference to earlier suit No. 783, that *"it is hard to see any substantial difference between the case at bar and Calaf* v. *Calaf* (232 U. S. 371, 374, 58 L. ed. 642)," can judgment for respondent in this cause be validly upheld in face of the binding *res judicata* rule set up by this Court in *Calaf* v. *Calaf*, a case hailing precisely from Puerto Rico, *that the res judicata defense is not to be defeated by "differing allegations which are simply different means to reach the same result"?* Can the judgment below stand when the ignored well settled law and decisions in Puerto Rico are also in harmony with apposite rulings of this Honorable Court? (Supporting Brief, Point II, subdiv. B, at p. 33, *et seq.*). Furthermore, may the Court of Appeals validly assert that "it is for the Supreme Court of Puerto Rico to say what was in fact actually decided and what was merely dictum" in prior case No. 783 (Supp. R. 562 mid.), when such holding is utterly in conflict with the basic principle adverted to by this Honorable Court in *Angel* v. *Bullington*, 91 L. ed. 832, syll. 4, that *"for the purposes of res judicata, the significance of what a court says it decides is controlled by the issues which were open for decision"?* And, lastly, after a binding decision between the same parties in prior cause No. 783, regarding the validity and conclusiveness of judgment entered in No. 10,416 and of execution proceedings had in No. 6889, should the Court of Appeals be permitted to now set aside such previous and conclusive holdings in No. 783 just because they were covered in but one paragraph? (Supp. R. 562 mid.).

III. The record shows that Juan A. Monagas, petitioners' ancestor, has openly and uninterruptedly possessed in fee, since its acquisition in 1923, the property interest which respondent now seeks again to reach, and that said Monagas' title was even judicially confirmed in subsequent actions No. 10,416 instituted in 1924 and in No. 783, which was finally decided in favor of the Monagas

family in 1942 (*Vidal* v. *Monagas*, 60 PRR 763). In failing to uphold the validity of petitioners' title also by adverse possession, is not the judgment sought to be reviewed herein manifestly wrong as inescapably inconsistent with deeply rooted principles and well settled local law and decisions, as exhibited in the supporting brief, at page 36?

Reasons relied upon for allowance of the writ

1. The matters sought to be reviewed herein involve most important questions of *res judicata*. The Court of Appeals has rendered a decision in direct conflict and which does clear violence, as pointed out in the foregoing questions, to well settled principles of local law and the applicable insular and federal precedents. The decision below has so far departed, or sanctioned departure, from the accepted and usual course of local law and decisions, as to call for an exercise of this Court's reviewing power.

2. In holding adversely to petitioners, the Court of Appeals has even gone so far as to erroneously refer, concerning the serious *res judicata* doctrine involved, to a *dissent* in *Angel* v. *Bullington*, 330 U. S. 183, 201 *et seq.* (Supp. R. p. 561, note 3), instead of considering and applying the binding authority of this Court's majority decision therein.

3. It thus patently appears that the Court of Appeals fell into inescapable errors in disregarding at least two prior valid judgments (Nos. 10,416 and 783), which were plainly *res judicata* in the instant cause. The judgment and opinion *a quo* cannot be read without a mounting sense, a poignant realization of a most regrettable failure of justice below.

4. *Interest republicae ut sit finis litium* is a maxim as old as the law and is the foundation of the *res judicata*

doctrine. Needless to say the authority of prior adjudications is inseparably connected with the maintenance of public order, the repose of society and the quiet of families. Such is the lofty contribution of the doctrine of *res judicata* to judicial effectiveness and social stability. The rule requires that what has been once definitely determined, ratified or settled through or by a competent tribunal shall be accepted as irrefragable, legal truth.[6]

5. As held by this Hon. Court in *Reed* v. *Allen*, 76 L. ed. 1054, syll. 2: "The mischief which would follow the establishment of a precedent for disregarding the doctrine of *res judicata* would be greater than the benefit which would result from relieving some case of individual hardship." In *Baltimore S.S. Co.* v. *Phillips*, 71 L. ed. at page 1074, col. 1 top, it is again adverted: "The conclusion that the judgment must be reversed cannot be *avoided without subverting long established principles of general application* [*res judicata* principles], *which we are not at liberty to set aside for a special case of hardship.*" And in *Hart Steel Co.* v. *Railroad Supply* (61 L. ed. at p. 1153, col. 1 bot.), followed by the Supreme Court of Puerto Rico itself in *Cintrón* v. *Yabucoa*, 54 PRR 493, syll. 3, 499 top, it was settled that:

> "This doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. *It is a rule of fundamental and*

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[6] And this is certainly a case in which the policy of stopping repeated litigation should prevail, for respondent was afforded and he availed, *though unsuccessfully*, of three opportunities (cases Nos. 6889, 10,416 and 783) to fully assert his claims or defenses, and to inquire into the undeniable truth and validity of decisions against him. And on reliance upon such earlier judicial pronouncements, *which became res judicata*, the Monagas family, petitioners here, have unremittingly toiled on the Belvedere farm for upwards of a quarter of a century, until the unexpected, clearly erroneous judgment was entered here in defiance of three binding prior decisions which, since 1924, have been also guiding rules of property.

substantial justice, 'of public policy and of private peace', which should be cordially regarded and enforced by the courts to the end that rights once established by the final judgment of a court of competent jurisdiction shall be recognized by those who are bound by it in every way, wherever the judgment is entitled to respect."

6. This Court has expressly indicated that the *res judicata* doctrine is substantially the same in Puerto Rico as in other American jurisdictions. *Calaf* v. *Calaf,* 58 L. ed. at page 645, col. 1 mid. ("We understand *the Codes* [Civil Code, 1930 ed., § 1204, see Appdx. A], and the court to assert *a doctrine substantially that of our law*"). Should the action of the insular supreme court be then validly countenanced, as the Court of Appeals apparently did, to the extreme of letting it apply the *res judicata* doctrine, as a rule of public policy, in a way evidently inharmonious with fundamental principles which, under such doctrine, even the Puerto Rico supreme court itself has long firmly established in the community, in accord with obligatory, applicable rulings of the Supreme Court of the United States?

7. The *res judicata* doctrine is not belittled by any attempt at merely labeling it a matter of local law. That would amount to an obvious misconception of the essential purpose and great public significance of such universal principle. If it is the same substantially prevailing in continental United States (*Calaf* v. *Calaf, supra*), then all American citizens in Puerto Rico are also and equally entitled to the full benefit of that fundamental rule of justice, of private peace and of public policy, which should not be lightly disregarded nor sterilized by calling it a local practice. *A fortiori,* when at least two prior valid judgments (Nos. 10,416 and 783), among other obviously prejudicial errors, have been brushed aside in the instant litiga-

tion, in open conflict with basic and binding law and principles repeatedly upheld by the Puerto Rico supreme court, by the Court of Appeals and by the Supreme Court of the United States. In this connection, it should be additionally recalled that in duly complying with a condition expressly imposed by judgment in earlier case No. 10,416, entered for the Monagas in 1924 (R. 464 bot.—465), which has been now invalidated, Juan A. Monagas, petitioners' ancestor, even personally satisfied a $20,000 mortgage debt, to relieve respondent and his mother (Vidal's heirs), at their own behest (R. 461 mid.), of all pecuniary liability therein (see post, Point I-C, p. 25).

8. This national Supreme Court has reviewed and reversed lower courts solely because of misapplication of the *res judicata* rule which, as stated by this Court, is of great significance as it concerns the orderly and uniform "*administration of justice.*" *Angel* v. *Bullington* (1947), 330 U. S. 183, 186, 91 L. ed. 832, 835; *Heiser* v. *Woodruff*, 90 L. ed. at p. 973, 327 U. S. 726, 729; *Reed* v. *Allen*, 76 L. ed. 1054, syll. 2; *Baltimore S. S. Co.* v. *Phillips*, 71 L. ed. 1070, 1074, col. 1 top; *Hart Steel Co.* v. *Railroad Supply*, 61 L. ed. at p. 1153, col. 1 bot., quoted and followed in *Cintrón* v. *Yabucoa*, 54 PRR 493, syll. 3, p. 499 top. It is thus nakedly obvious that allowance of a certiorari in the instant cause, will keep bright the flame of justice: the lofty goal of Bench and Bar.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted, for the reasons briefly sketched above and more fully elaborated in its supporting brief.

December 13, 1948.

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BRIEF IN SUPPORT OF THE FOREGOING PETITION

Opinions Below

The opinion of the Supreme Court of Puerto Rico is reported in *Vidal* v. *Monagas*, 66 DPR 622-642, Spanish edition. Its English version is set out in the printed record (R. 477-493).

The opinion of the Court of Appeals for the First Circuit, rendered October 4, 1948, appears in the printed record (Supp. R. 549-564).

Jurisdiction

The jurisdiction of this Court is invoked under *Section 1254* of the new Title 28, United States Code Judiciary and Judicial Procedure, effective September 1, 1948.

Statement of the Case

It appears in the Petition (*ante*, pp. 2-8), containing all that is material to the consideration of the questions presented.

Specification of Errors to be Urged

I. The affirmatory judgment of the Court of Appeals, in not accepting as *res judicata* the former judgment in suit No. 10,416, is clearly in conflict with recognized, existing local law and with applicable insular and federal precedents.

II. The Court of Appeals' failure to uphold another prior judgment in case No. 783, as *res judicata* in the instant litigation, is also plainly inconsistent with prevailing statutory and decisional local law, and the apposite federal precedents.

III. In failing to hold that Juan A. Monagas, petitioners' ancestor, had acquired title by adverse possession, as held between the same parties in earlier case No. 783, the judgment under review is manifestly inconsistent with deeply rooted principles and the well-settled local law.

ARGUMENT

I. The affirmatory judgment of the Court of Appeals, in not accepting as *res judicata* the former judgment in suit No. 10,416, is clearly in conflict with recognized, existing local law and with applicable insular and federal precedents.

Case No. 10,416 *was exclusively a proceeding in invitum or judicial action from the start,* where the Mayaguez district court, upon defendants' consent, entered judgment accordingly (R. 462-465). The court's decree in No. 10,416 was rendered after a hearing and argument by plaintiffs and defendants through their respective attorneys, and upon consideration of the affidavit or sworn pleading filed in that case by respondent's mother, admitting the facts in the complaint and consenting to judgment therein on certain terms (R. 460-461).

Apropos of this judgment in No. 10,416, the insular supreme court expressly conceded that: "Besides denying certain averments of the complaint, the defendants [petitioners in the instant case] pleaded the proceedings had in cases Nos. 6,889, 10,416 and 783, invoking them as conclusive on the issues now raised by the plaintiff [respondent herein]. * * * Another judgment invoked by the appellants as decisive of the controversy settled by the judgment appealed from, is that rendered in case 10,416 involving the

liquidation of the partnership Monagas & Vidal. *Undoubtedly that judgment dealt with the same cause of action now before us, and concerned the same parties.* If it was valid, it decided the issue adversely to the plaintiff [respondent]" (R. 482 bot., 487 top). And as will be hereinafter shown, there is not a scintilla of doubt as to the judgment's validity in No. 10,416.

A. Inapplicability of citations in the Court of Appeals' opinion.

The Court of Appeals, upon affirmance, chose not to label as *res judicata* the judgment in prior adversary suit No. 10,416, because, as it said: (1) there was *no authorization* from a district court determining the necessity and utility *for the consent decree* entered therein; (2) there was *no evidence of the necessity and utility* of such consent given by the mother on behalf of respondent, then a minor; and (3) in view "that minor's rights are *not given adequate protection by judgments* entered only because they are *consented to by a parent* (Opinion, Supp. R. 558 bot.). Thereupon, the Court of Appeals refers to *Cruz* v. *Central Pasto Viejo, Inc.*, 44 PRR 354, interpreting Sections 159 and 212(5) of the *Civil Code*, 1930 edition (Supp. R. 558).

The *Cruz* case is inapplicable. It involved a damage claim in behalf of a minor which was *extrajudicially settled* by his father *without the intervention of any district court.* There the parties did not avail of any district court's intervention at all in respect to an *extrajudicial* compromise contract. *Case No. 10,416 did not involve any extrajudicially settled compromise contract, but a judicially consented decree.* However, if Vidal's widow's (respondent's mother's) consent had been given respecting an *extrajudicial* compromise contract concerning her then minor son, which was not the case here, all that would have been required, according to the *Cruz* case, was *a district court's subsequent approval* of the transaction, *in a much less formal fashion than through the solemnity of a judg-*

ment like that entered in No. 10,416 (R. 462-465). Sections 159 and 212(5) of the Civil Code (see *Appdx. A*), as interpreted in the *Cruz* case, cited by the Court of Appeals, merely require authority of a district court for alienation of minors' property by their parents or tutors. But that statutory requirement, according to local law, is only necessary in special, *ex parte proceeding involving extrajudicial transactions. It has never been imposed on litigants in adversary suits dealing with a judicial phase of the litigation, like the consent decree entered in No. 10,416* (R. 462-465). A consent judgment is not a mere authentication of an agreement between parties, *but is a judicial act involving exercise of judicial power. Urbio* v. *Porto Rico Ry. Light & Power Co.* (1946), 68 F. Supp. 841, syll. 2, affd. 164 F. 2d 12.

B. The Court of Appeals' decision respecting case No. 10,416, is obviously inconsistent with the following statutes and well established principles of local law.

1. *In exercise of parental, plenary right of patria potestas, parents fully represent minors in adversary proceedings, without need of any previous judicial authorization.*

There was no need of any special authorization to respondent's mother by a district court previously determining the necessity and utility for the consent decree entered in adversary action No. 10,416. Such holding clearly does violence to the following uniform, well-settled precedents and principles of local law:

a. *In exercise of the parental plenary right of patria potestas,*[7] *especially in adversary proceedings like those*

[7] The existence of patria potestas is crystal clear in No. 10,416. It was a fact averred in the complaint therein (R. 460, *Sixth*), admitted (R. 460 bot., par. 2) and sworn to (R. 461, verification) in the consenting answer (R. 460-461), and also expressly so found by the insular supreme court (R. 462 top). It was even explicitly admitted in respondent's three sworn complaints in the present case (R. 4, 38, par. V, 78).

in No. 10,416, there is no need of any previous judicial authorization nor of even appointing any guardian ad litem, the father or mother being the lawful representative of the minor children in such judicial actions. Cibes v. *Santos,* 22 PRR 208, followed in *Dávila* v. *P. R. Ry. Lt. & P. Co.,* 44 PRR 924, 930; *Agostini* v. *Registrar,* 39 PRR at page 524 mid.; *Lazcano* v. *Heirs of Sifonte,* 42 PRR 387, syll. 2, p. 389 bot.; *Biaggi* v. *Corte* (March 15, 1948), 68 DPR 407, syll. 2, Spanish edition; *Rodríguez Pou* v. *Martínez,* decided by the insular supreme court on March 19, 1948, 68 DPR 451, syll. 5-7, Spanish edition; *Code of Civil Procedure,* § 56; *Civil Code, ed. 1930,* § 153; *Puerto Rico new Rules of Civil Procedure, No.* 17(f), 60 PRR, Appdx., p. 18 bot.[8] (See *Appendices* A and B.)

b. *As a corollary from the foregoing, the provisions of the local special act relative to ex parte applications for judicial authorizations concerning alienation of minor's property, are inapplicable to inter-parte court proceedings.*

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[8] In *Agostini* v. *Registrar,* 39 PRR 522, 524 mid., it was held: "When in an action against heirs *including minors* the latter *are represented by their father with patria potestas* and final judgment is executed on their property the deed of sale is recordable * * * so when the surviving parent is in full exercise of his *patria potestas* over the minor children * * * *it is unnecessary to appoint a guardian ad litem* to represent minors, the father being their lawful representative." In *Lazcano* v. *Heirs of Sifonte,* 42 PRR 387, syll. 2, it is also stated: "Where a minor institutes an action and appears therein *represented by her father with patria potestas* over her, *this is all such minor needs to perfect her capacity to sue.*" Similarly, the *Puerto Rico Civil Code,* ed. 1930, § 153, and Section 56 of *P. R. Code of Civil Procedure* (equivalent to Rule 17(f) of the new Rules of Civil Procedure, 60 PRR, Appdx., p. 16 bot.), provide that when an infant is a party, *"he must appear by his father or mother with patria potestas, if living."* And in *Biaggi* v. *Corte* (March 15, 1948), 68 DPR 407, syll. 2, the insular supreme court holds that "Rule 17(f) has not changed the doctrine in this jurisdiction. Under Sections 56 of the Code of Civil Procedure and 153 of the Civil Code, as under Rule 17(f), *a father or mother with patria potestas represents a minor in a litigation*", though such minor is the real party in interest.

This is another fundamental rule of property and a basic principle of local law established at least since 1913 by the Puerto Rico Supreme Court. *Flores* v. *Registrar* (1913), 19 PRR 967; *García* v. *Registrar* (1916), 23 PRR 394, 397.[9]

c. Under the federal Organic Act for Puerto Rico, the power to establish insular *policies* for the protection of infants, as well as any other general or legislative policy, resides exclusively in the local legislature (48 U. S. C. A., Sec. 811). For decades, the territorial Legislative Assembly has enacted that, in an action, a minor "*must appear by his father or mother with patria potestas, if living.*" See Code of Civil Procedure, sec. 56; Civil Code, ed. 1930, sec. 153; Puerto Rico Rules of Civil Procedure, No. 17 (f), 60 PRR Appdx., p. 16, bot. (See *Appendices A and C*); *Agostini* v. *Registrar*, 39 PRR 522, 524 mid.; *Biaggi* v. *Corte*, decided March 15, 1948, 68 DPR 407, syll. 2, Spanish, edition, and other cases cited under subdivision I-B and in footnote 8, *ante*. These legislative enactments, vesting parents with plenary authority to fully represent their minor children in adversary proceedings, stem from basic civil law principles that are clear as a bell. Such clarity is responsible for the profuse and uniform local precedents above indicated. Any attempt by the insular judiciary to override, amend, extend or fix a new or different policy, would fly in the face of unambiguous local law and the established precedents of long standing. It plainly would be an attempt beyond the competence of insular tribunals which, as other courts of justice, are not concerned with

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[9] A brief examination of cases requiring evidence as to the necessity and convenience for alienation of minors' property, and of previous judicial authority therefor, shows that such decisions involve attempted *private or extrajudicial* alienation of minors' interests in realty without the usual judicial intervention. *Such rulings are wholly inapposite respecting adversary litigations like case No. 10,416, which was not an ex parte application under the insular act relative to special legal proceedings* (*Code of Civil Procedure*, ed. 1933, § 614, i.e., *Law of Special Legal Proceedings*, §§ 80, 81).

the propriety of extending or amending legislation—nor with its need or wisdom. *Olsen* v. *Nebrasca*, 85 L. ed. 1305, syll. 3, page 1310; *Sunshine Anthracite Coal Co.* v. *Adkins*, 84 L. ed. 1263, syll. 7, page 1272, col. 1 mid.; *Mercado* v. *Riera*, 152 F. (2d) at page 96, col. 1 mid., cert. den. 90 L. ed. 1612; *Mercado* v. *Corte*, 62 PRR 350; *Porrata* v. *Court*, 53 DPR at page 155 mid. (Sp. ed.), 53 PRR 140.

2. *According to controlling federal and local decisions, even supposed lack of evidence is unavailing to trench upon the binding effect, as res judicata, of judgment in prior case No. 10,416.*

The insular supreme court's ruling, as affirmed by the Court of Appeals, failed to accept the judgment in No. 10,416, as *res judicata* in the instant cause, on the ground that "there was *no evidence* of the necessity or utility of the consent given on behalf of the minor" (Opinion, Supp. R. 557, bot.). That is a ruling positively in conflict with the applicable and binding decision of the United States Supreme Court in *Heiser* v. *Woodruff* (1946), 90 L. ed. 971, syll. 8, 327 U. S. 726, and with that of the insular supreme court itself in *Amadeo* v. *Compañía Azucarera del Toa*, 58 PRR 756, syll. 2. In the *Heiser* case, *supra*, this national highest Tribunal clearly held that *"a judgment is nonetheless res judicata of issues raised because it is based on a lack of evidence to support the allegations made."* With this view, the Puerto Rico supreme court is in perfect accord. *Amadeo* v. *Compañía Azucarera del Toa*, 58 PRR 756, syll. 2, and at page 761 mid., where it is explicitly stated: *"The attack made* to the proceedings for approval *based exclusively on the lack of evidence is* in such consequence not direct, *but collateral, and is impossible at this stage of the proceedings."* Certainly, a so-called absence of evidence does not detract from the decisiveness and finality of a prior judgment. However, from the face of earlier judgment in No. 10,416, such asserted irregularity does not appear. On the contrary, the judgment itself in

No. 10,416 even shows there was a judicial inquiry prior to its entry (R. 462-465; *ante*, p. 16).

3. *A consent decree, as in No. 10,416, is res judicata and binding on infants, according to local and federal precedents.*

The Court of Appeals' unwarranted conclusion "that minor's rights are not given adequate protection by judgments entered only because they are consented to by a parent" (Supp. R. 558 bot.), unjustly deprives judgment in No. 10,416 of its undeniably binding and conclusive force as *res judicata* in the present case. It is respectfully submitted that such ruling is wholly discordant with local practices regarding parents' powers in Puerto Rico to fully represent or appear for their minor children *in adversary proceedings*, as hereinbefore demonstrated (*ante, subdiv. 1*, p. 18). Such conclusion is, in addition, *utterly inconsistent with the following well rooted local and federal res judicata principles governing consent decrees:*

a. *In Puerto Rico it is firmly established that a consent decree cannot be collaterally assailed.* As far back as 1911 and as recently as 1945, the insular supreme court has held that by consenting to the entry of judgment the defendant (respondent and his mother) expressly admits the facts set forth in the complaint, and that such judgment by consent, rendered by a court with jurisdiction of the subject matter and of the parties, like in No. 10,416, is valid and cannot be collaterally attacked. *Ex parte Morales* (1911), 17 PRR 1004, 1006 bot.; *Suàrez* v. *Betancourt* (1945), 64 PRR 448, syll. 3 and 4; *Code of Civil Procedure of Puerto Rico*, §§ 118, 132, 313[10]; *Harding* v. *Harding*, 49 L. ed. 1066;

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[10] *Code of Civil Procedure of Puerto Rico* (§§ 118, 132, 313, Appdx. C) shows that if a defendant (Vidal's heirs in No. 10,416) once in court does not controvert the complaint, its allegations must be taken as true; and that a defendant may also offer to allow judgment to be taken against him for the sum or property, or to the effect specified.

Snell v. *J. C. Turnell Co.*, 285 Fed. Rep. 356, syll. 2, and at page 358 bot.

b. *In Puerto Rico, as in other jurisdictions, infants are bound by consent judgments in actions wherein they are represented by their parents, a fortiori if such adjudications are entered in behalf of such minors, like in prior case No. 10,416 (see post, subdiv. C).* *Urbio* v. *Puerto Rico Ry. Light & P. Co.*, 68 F. Supp. 841, syll. 3, and at page 843, affd. 164 F. 2d 12; *Thompson* v. *Maxwell etc. Co.*, 42 L. ed. 540, 544, col. 1 mid.; *Dickson* v. *Neal* (C. C. A., 8), 2 F. 2d 534, syll. 8, page 537; *Derrisaw* v. *Schaffer*, 8 F. Supp. 876 syll. 7.[11]

c. *In any event, there being perfect identity of parties and causes* of action in No. 10,416 and in the instant case, as *expressly held by the insular supreme court* (R. 487 top), the conclusion is inevitable that any question as to alleged *want of capacity* in respondent's mother to consent to judgment in former case No. 10,416, is now foreclosed and has become *res judicata*. *Galanes* v. *Galanes*, 54 PRR 842, syll. 5: "*The want of capacity of a mother to judicially represent her son comes too late when raised for the first time* [even] *on* [direct] *appeal.*" *See to same effect: E. V. Parker* v. *Motor Boat*, etc., 86 L. ed. 184, syll. 5, page 192; *McCandles* v. *Furland*, 79 L. ed. 202, 206, col. 2, 207 col. 1 ("The rule is of general application and has been

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[11] *Urbio* v. *Puerto Rico Ry. Light & P. Co.* (1946), 68 F. Supp. 841, syll. 3, p. 843, affd. 164 F. 2d 12, states that in Puerto Rico infants are bound by consent judgments even though they could not have entered into a valid private agreement containing same terms and conditions. *Thompson* v. *Maxwell, etc. Co.*, 42 L. ed. 540, 544, col. 1 mid., similarly holds that infants are bound by consent decree agreed to by their attorney in accordance with settlement made in their behalf by their mother and guardian, and that such consent decree cannot be collaterally attacked. Moreover, *Derrisaw* v. *Schaffer*, 8 F. Supp. 876, syll. 7, says that an infant who sues by next friend or legal guardian is bound by judgment *to same extent as if he were of full age.*

applied in the federal appellate courts to a variety of cases. To lack of capacity on the ground of infancy * * *": p. 206 col. 2); *Oklahoma* v. *U. S. Civ. Serv. Com.*, 91 L. ed. 794 (failure to object in the trial court to a petitioner's capacity is a waiver of that defect); *Walling* v. *Miller* (1943), 138 F. 2d 629, syll. 9, at page 632 col. 2 bot., cert. den. 88 L. ed. 1076 ("* * * that Administrator lacked authority to maintain action * * *. The error pertained only to the *capacity* of the plaintiff and to the remedy, not to the power of the court * * * the decree is not subject to attack for such an error * * *").

If court entering consent decree had, as here, jurisdiction of subject matter and of parties, objection to the merits, like lack of consent, is reviewable upon appeal only. *Walling* v. *Miller*, 138 F. 2d 629, sylls. 1-7, cert. den. 88 L. ed. 1076; *Swift & Co.* v. *U. S.*, 72 L. ed. 588 sylls. 6, 9, 12.

In *Angel* v. *Bullington* (1947), 91 L. ed., page 833, syll. 13, this Hon. United States Supreme Court, in one of its latest pronouncements on the *res judicata* doctrine, held:

> "* * * *An adjudication bars future litigation between the same parties not only as to all issues actually raised and decided, but also as to those which could have been raised* [ib., p. 835 col. 1 mid.] * * * Litigation is the means for vindicating rights, but it may also involve unwarranted friction and waste. The doctrine of *res judicata* reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion * * * *And it has gone through, if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties* [ib., p. 839, col. 1 top] * * *." See also cases in footnote 13.

C. The patently erroneous voiding of judgment in No. 10,416, further entails a grave miscarriage of justice.

The judgment in prior action No. 10,416 was and is manifestly valid as has been shown. Its validity was further adjudicated *and, thus, judicially ratified in favor of the Monagas by subsequent action No. 783* brought by respondent here after attaining his majority, and by his mother.[12] The effectiveness of judgment in the earlier case No. 10,416 must, of necessity, operate as *res judicata* in the instant cause. In holding otherwise, a tremendously inescapable error has been committed, under clearly well-established basic principles on the *res judicata* doctrine, hereinbefore demonstrated.

But it must be added that still another serious, patently harmful situation is presented in rejecting the crystal clear validity of judgment in former suit No. 10,416.

1. *Complying with condition in judgment No. 10,416, deceased Juan A. Monagas, petitioners' ancestor, fully discharged a $20,000 mortgage-lien to relieve Vidal's heirs of liability thereunder.*

The voiding of said consent decree in No. 10,416 further entails a grave failure or miscarriage of justice, as urged

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[12] After respondent reached his majority, he and his mother, Ramiro Vidal's widow, brought a new suit numbered 783 in the Mayaguez district court (R. 285-304) against the heirs of Ramon Beauchamp and the Monagas family, whereby the present respondent and his said mother, by their alleged second cause of action in No. 783 (R. 292-303), after referring to the earlier suit against them by the Monagas (No. 10,416), and to the judgment therein rendered on May 17, 1924, they sought to annul that prior judgment on the asserted grounds, among others, that respondent's mother consented thereto owing to certain supposed misrepresentations by Monagas (R. 297 bot. 299); that No. 10,416 involved the acknowledgment of a conveyance of real property such as the one-third interest in Belvedere estate, without a petition of necessity and utility

(*Footnote continued from preceding page*)

by petitioners in their brief and at the oral argument before the Court of Appeals. Upon advisement and due consideration, the final judgment in No. 10,416 was entered by the Mayaguez district court on May 17, 1924 (R. 462-465), granting the complaint's prayer (R. 457-458), and specifically acknowledging and adjudging, among other matters, title in the Monagas over their respective proportionate shares in the Belvedere Estate, *but on condition that a $20,000 mortgage liability be paid by the said Monagas to relieve Vidal's heirs (respondent and his mother) "of the obligation of paying said debt"* (R. 464 bot. 465). It was there expressly provided:

> "*Fourth:* That as a result of the dissolution of the partnership 'Monagas & Vidal' and of the adjudication to the plaintiffs of the undivided interest to which each is entitled in the proportion stated, the said plaintiffs [the Monagas, petitioners here] acquired said shares subject to the encumbrance on the 'Belvedere Estate' of the mortgage granted by the partnership 'Monagas & Vidal' * * * for the sum of $20,000 as security for promissory notes * * * the defendants [respondent and his mother], *that is, the heirs of Ramiro Vidal Martinez, being relieved of the obligation of paying the said debt* * * *" (R. 464 bot. 465).

Juan A. Monagas, now deceased (petitioners' ancestor), faithfully complied with said condition in judgment No.

in favor of Neftali Vidal-Garrastazu and without evidence warranting the court's decision; and that, therefore, the court lacked jurisdiction over the then infant Neftali Vidal in No. 10,416 (R. 302, 303 bot.). Judgment was entered in No. 783 for the Monagas and against the respondent here and his mother (R. 314, 349 bot.). *It was there held, among other things, that the proceedings in former suit No. 10,416 could not be attacked collaterally.* Such holding was expressly recognized by the insular supreme court to have been made in judgment No. 783 (R. 486 near bot.). An appeal from this judgment by Vidal's heirs was dismissed. *Vidal* v. *Monagas* (1942), 60 PRR 763. *Hence, the judgment in No. 10,416 was newly reinforced and for all purposes confirmed by that rendered in No. 783, as against respondent in the present case.*

10,416, by fully paying the $20,000 mortgage-notes on the Belvedere estate (R. 279-282, Exhibit 8), *thus relieving Vidal's heirs of their liability as provided for by the said judgment in No. 10,416, and in conformance with Vidal's widow's sworn consent thereto* (R. 461 mid.).

Could it be possible to fail finding the existence not only of patent and inescapable error but of an obviously inherent failure of justice in the unwarranted and unjust annulment of prior judgment in case No. 10,416?

II. This Court's affirmance and its failure to sustain prior judgment in No. 783, as *res judicata* in the instant litigation, is also plainly inconsistent with prevailing statutory and decisional local law, and the apposite federal precedents.

A. Reasoning advanced by the Court of Appeals for not disturbing the erroneous ruling below respecting judgment in No. 783, is not warranted.

The Court of Appeals declined to disturb the erroneous ruling by the supreme court of Puerto Rico in respect to prior judgment in No. 783, apparently on the basis that the Mayaguez district court in said action No. 783 (1) "covered the question of *res judicata* in but one paragraph"; and (2) that "it is for the Supreme Court of Puerto Rico to say what was in fact actually decided and what was merely dictum in the opinion of the insular District Court in case No. 783" (Opinion, Supp. R. 562).

(1) It is respectfully submitted that the binding effect of a decision as *res judicata* cannot be measured or belittled by the orthographical length or extension employed by a court in an earlier litigation. A judgment is nonetheless *res judicata* of issues raised because it is written in a few words. What, then, about a brief per curiam or about a dismissal without opinion? Can it be said that such judgments should not operate as *res judicata? Even*

matters not pleaded nor decided, but which could have been raised or asserted, are barred.[13]

(2) It is also urged, with all due respect, that once federal appellate jurisdiction is acquired and exercised, as in the instant cause, it is not for the supreme court of Puerto Rico to say what was in fact actually decided and what was merely dictum in a prior case between the same parties. Such conclusion by the Court of Appeals is obviously in conflict, among others, with a recent determination by this United States Supreme Court, that "***For the purpose of res judicata, the significance of what a court says it decides is controlled by the issues which were open for decision.***" *Angel* v. *Bullington* (1937), 91 L. ed. 832, syll. 4, and at page 835, col. 1 bot., 330 U. S. at page 187.[14]

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[13] "An adjudication bars future litigation between the same parties not only as to all issues raised and decided, *but also as to those which could have been raised.*" *Angel* v. *Bullington* (1947), 91 L. ed. 833, syll. 13, and at page 839, col. 1 top; *Heiser* v. *Woodruff* (1936), 90 L. ed. 971, syll. 9, p. 977, col. 2 bot.; *Chicot etc. Dist.* v. *Baxter State Bank*, 84 L. ed. 330, syll. 6, p. 335, col. 1 top; *Méndez* v. *Baetjer* (CCA, 1), 106 F. 2d at p. 163 (syll. 3, 8), pp. 165, 166; *Insular Board of Elections* v. *District Court* (1944), 63 PRR 787, syll. 6; *González Padín Co. Inc.* v. *Tax Court of Puerto Rico* (1947), 67 DPR (Spanish edition) at p. 228, citing and following *Angel* v. *Bullington, supra,* among other United States Supreme Court decisions; *Graniela* v. *Yolande, Inc.* (1946), 65 PRR 664, syll. 3; *Manrique* v. *Aguayo,* 37 PRR at p. 320, followed in *Heirs of Rivera* v. *Lugo,* 63 PRR at p. 17 top.

[14] Aside from the foregoing, no other logical ground is conceived to justify the result reached below respecting prior judgment in case No. 783 (Supp. R. 561). In passing, let it be said that the function of the insular supreme court in establishing rules of judicial administration should not be validly countenanced to the point of applying the res judicata doctrine, as a rule of public policy, in a way evidently inharmonious with fundamental principles which,

(*Continued on following page*)

Yet, the ruling in No. 783, regarding the conclusiveness of proceedings in Nos. 6,889 and 10,416, *was not a dictum* as intimated by the Court of Appeals (Supp. R. 562). What were the issues in former suit No. 783? Vidal's heirs (respondent here and his mother) sought to reach the very ⅓ interest in Belvedere estate, which is the identical and undeniable object of the present case, wherein the Puerto Rico supreme court itself found that such *farm was the only asset* involved (R. 483 top). The Monagas, by demurrer (see post, footnote 18), resisted on several grounds, *including the conclusive effect of earlier proceedings in Nos. 6889 and 10,416* (R. 305, 313 mid.). The Mayaguez district court considered the question of *res judicata* in No. 783, and found it adequate (R. 349 mid-350). *This is freely conceded by the insular supreme court itself, when it says* in its opinion below *that, "The [Mayaguez] court in case No. 783 also stated that the proceedings in cases Nos. 6,889 and 10,416 were not void* but voidable, *and that they could not be attacked collaterally"* (R. 486 near bot.). It all affirmatively shows that such *res judicata* ruling *was not a mere dictum, but an issue actually raised and decided* by the Mayaguez district court in case No. 783, *and that the merits of that res judicata issue, having been thus opened and even adjudicated in said earlier litigation No. 783, cannot and, in jus-*

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under such doctrine, ever the Puerto Rico Supreme Court itself has long firmly established in this community, in accord with obligatory, applicable rulings made by the Supreme Court of the United States, as has been already shown. A fortiori, *when the res judicata doctrine is substantially the same in Puerto Rico as in other American jurisdictions, Calaf* v. *Calaf*, 58 L. ed. at page 645, col. 1 mid., and it *"should be cordially regarded and enforced by the courts." Steel Co.* v. *Railroad Supply Co.*, 61 L. ed. at p. 1153, col. 1 bot., quoted and followed by the lower supreme court in *Cintrón* v. *Yabucoa*, 54 PRR 493, syll. 3, and at page 499 top.

tice, should not now be relitigated.[15] *Angel* v. *Bullington* (1947), 91 L. ed. 837, col. 1 mid.; *Heiser* v. *Woodruff* (1946), 90 L. ed. 971, syll. 1.

(3) But the Court of Appeals states that "there is good basis for the conclusion of the court below that all that was actually decided in No. 783 was that the cause of action set out therein had prescribed" (Supp. R. 562). Still, judgment in former case No. 783 must be held valid as *res judicata* in the present litigation, even if such prior action No. 783 had been actually decided on the ground that it had prescribed. Why? Respondent himself, as shown by the Court of Appeals' opinion (Supp. R. 554), has admitted on this record that "the partnership expired [at least] on June 30, 1924" (see also R. 227 top, Exhibit B). The insular supreme court has also adjudged that *Vidal & Monagas,* up to the time of its dissolution, *was a civil partnership* and not a mercantile firm because Vidal & Monagas was organized for agricultural purposes and it was engaged solely in farming (R. 489 mid.). So, there can be no doubt that, since such dissolution, the partnership property was owned in common and undividedly by the partners. *The accepted rule and undeviat-*

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[15] An appeal taken by Vidal's heirs (respondent and his mother) in No. 783 was dismissed by the Puerto Rican supreme court in 1942 (60 PRR 763). But they did not seek further review by the Court of Appeals. Hence, the binding effect of prior judgment in No. 783, as res judicata, is additionally reinforced by the self-evident fact that respondent forewent his right to have higher courts, the Court of Appeals and this Court, enable him to win his case by holding that he was right and that the Mayaguez district court was wrong in said action No. 783. *"If a litigant chooses not to continue to assert his rights after an intermediate tribunal has decided against him, he has concluded his litigation as effectively as though he had proceeded through the highest tribunal available to him". Angel* v. *Bullington* (1947), 91 L. ed. at page 837, col. 1 mid., 330 U. S. at page 189, cited and followed on this point by the insular supreme court in *González Padín Co., Inc.* v. *Tax Court of Puerto Rico* (1947), 67 DPR 222, and at page 228 (Spanish edition).

ing practice in Puerto Rico is that "upon dissolution of a civil partnership, the partnership property is owned in common and undividedly by the partners." Chardón v. *Laffaye,* 43 PRR 623 bot., 627 mid., citing a decision of the supreme court of Spain dated August 3, 1892; *Chardón* v. *Laffaye,* 46 PRR at page 890 mid.; *Miramar Realty Co.* v. *Registrar,* 44 PRR at p. 811 bot. Respondent has also granted (his main br., p. 27, note 25 before the Court of Appeals) that *the status of a dissolved civil partnership* in Puerto Rico is "*that of a community of property* [tenancy in common] *and not that of a partnership in liquidation.*"[16] That is why an undivided hereditary share or interest in realty may be judicially *claimed or revendicated* in Puerto Rico. *Heirs of Rivera* v. *Manso,* 64 PRR 617, syll. 3, p. 619; *Cintrón* v. *Yabucoa Sugar Co.,* 42 PRR 668, 672 mid.; *Petrilli, et al.* v. *Pérez,* 35 PRR 712 bot., 714 mid. It all convincingly shows that prior case No. 783 was validly instituted *in 1938* (R. 285-305) by Vidal's heirs, in their attempt to revendicate, *though unsuccessfully,* an alleged proportionate share in Belvedere Estate. In these circumstances, even if it be granted for the sake of argument— "that all that was actually decided in No. 783 was that the cause of action set out therein had prescribed" (Opinion of Court of Appeals (Supp. R. 562 mid.)), it is patently obvious that earlier judgment (R. 314-350) in case No. 783 should be held fortified as *res judicata* in the instant cause, *since where a demurrer, as happened in No. 783, urges the statute of limitations and is sustained and followed by judgment, such judgment*

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[16] It is thus manifest that the case of *Rosaly* v. *Graham* (1910), 16 PRR 156, cited by the insular supreme court (R. 483 mid.), is plainly inapposite. The *Rosaly case only concerns a mercantile firm* where, even on dissolution, its assets are not owned in common by the individual members, *as occurs in case of plain civil partnerships,* like Vidal & Monagas. In the *Rosaly case* an undivided share claimed in ejectment had been contributed *to a mercantile firm,* whose liquidation was not even averred.

likewise constitutes a decision on the merits and is res judicata. Liken v. *Shaffer,* 64 F. Supp. 435, syll. 56, p. 445, affd. on such gr. 141 F. 2d 877, syll. 12, cert. den. sub. nom. *Wilson* v. *Shaffer,* 89 L. ed. 605. See also cases in footnote 18, *infra.*

It should be recalled, however, that in No. 783 everything concerning the alleged partnership Monagas & Vidal was set out (R. 296 bot.) and respondent, as co-plaintiff in that case, with full knowledge of his means of redress, after reciting that the Belvedere lands had belonged to the said firm and that upon the decease of his father Ramiro Vidal, he became entitled to a one-third share therein, demanded judgment for the restitution of that undivided interest and *for a liquidation and settlement* between the Monagas and the then plaintiffs, including mesne profits, etc. (R. 304 top). *It is unquestionable, therefore, that a liquidation of all affairs between the parties to No. 783, was there sought, in addition to revendication of realty and the annulment of proceedings in No. 6889 and of the judgment in No. 10,416* (See Court of Appeals' opinion, Supp. R. 560).[17]

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[17] However, any contention that the "perfect identity" named in Section 1204 of the Puerto Rican Civil Code, ed. 1930 (§ 1252, Spanish Civil Code) is not the "substantial identity" of actions and parties required in American jurisdictions, would be wholly unwarranted. It should be again noted that this Court has expressly indicated that *the res judicata doctrine is substantially the same in Puerto Rico as in other American jurisdictions. Calaf* v. *Calaf,* 58 L. ed. at p. 645, col. 1 mid. *Manresa,* the renowned Spanish commentator, says (Vol. 8, ed. 1907, p. 583 mid.) that we must "fix our attention on pronouncements of the most recent jurisprudence which, out of due precaution against litigants in bad faith and considering the practical purpose of putting an end to litigations, *has interpreted rather liberally the* [res judicata] concurrent requirements demanded by the Code." *Vazquez* v. *Santos, etc.,* 54 PRR 587, syll. 2, holds that "the fact that the basis of petitioning varies with the suits will not prevent the defense of res judicata from

(*Continued on following page*)

B. The judgment in the present case is out of harmony with the guiding *res judicata* rule, as set up for Puerto Rico in *Calaf* v. *Calaf*, 232 U. S. 371, 374, 58 L. ed. 642, which is decisive as to conclusiveness of judgment in former suit No. 783.

Petitioners have presented a meritorious, just and unshakable demonstration that prior action No. 783 and the present case involve the same causes, transaction and object, as the two actions comprise slightly different means to attain the same object; and that the difference, if any, between *Calaf* v. *Calaf, supra* (232 U. S. 374, 58 L. ed. 645), decided by this federal Supreme Court in a case coming precisely from Puerto Rico, and suit No. 783 in relation to the instant cause, would simply be arithmetical. In the *Calaf* case plaintiff claimed ½ of the estate left by his father. In No. 783, as well as in the present case, appellee's attempt, *as heir of deceased partner Ramiro Vidal Martínez,* is to reach a ⅓ interest in Belvedere estate which, since 1924, *is the only asset involved* to which the record refers, as also found by the Puerto Rico supreme court (R. 483 top).

The Court of Appeals characterizes as "the more difficult question" the "effect upon the instant litigation of the judgment entered in case No. 783" (Supp. R. 559). Then, that Court states petitioners' cogent contention, among others, that "although the action in No. 783 may have differed in form from the one in the case at bar, *nevertheless the same result was sought, i. e.,* the liquidation of the assets of the dissolved partnership Monagas &

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prevailing". And in the *Insular Board of Elections case* (63 PRR at p. 799 mid.), it is plainly stated that once a judgment denying a mandamus is entered, petitioners "may not afterwards file * * * the same petition *or another substantially the same* [u otra *sustancialmente igual*] * * *. Because they would be barred by the defense of *res judicata* * * *." It all shows that the *"substantial identity"* prevails both in Puerto Rico and American jurisdictions, upon a liberal and reasonable construction of § 1204 of the *Civil Code*, ed. 1930.

Vidal and distribution of one-third thereof to the plaintiff as his father's heir. Therefore [petitioners] say, citing *Calaf* v. *Calaf*, 232 U. S. 371, 374, *'the present case is simply a different means to reach the same result'* as that sought in the earlier litigation, and hence they contend that the judgment in the earlier case is conclusive in this one." And the Court of Appeals expressly concedes that—

> *"It is hard to see any substantial difference between the case at bar and Calaf* v. *Calaf, supra, upon which the appellants heavily rely,* for in that case it was held by the Supreme Court of Puerto Rico, and on direct appeal the Supreme Court of the United States affirmed, that a *dismissal on demurrer without leave to amend*[18] of a suit brought by the plaintiffs against the defendant to recover one-half of a decedent's estate *precluded a subsequent suit by the same plaintiffs* seeking to have the institution of the defendant as the decedent's heir declared void and the intestate succession of the decedent opened, whereby the plaintiffs would become entitled to one-half the estate—*the Supreme Court of the United States saying* (232 U. S. 374 [58 L. ed. 645] *'these differing allegations are simply different means to reach the same result'*" (Supp. R. 560 bot.).

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[18] In Puerto Rico it is also a well-established rule that "where a court in rendering judgment sustaining a demurrer for *insufficiency of* the *complaint,* does not grant leave to amend, such judgment is a bar to another action between the same parties and upon the same facts". *Aguilera* v. *Pérez* (1937), 51 PRR 1, syll. 2, p. 4; *Laloma* v. *Fernández,* 61 PRR 550, and at page 551 bot. Such is the accepted federal rule in the United States. *Angel* v. *Bullington,* 91 L. ed. 833, syll. 9; *Heiser* v. *Woodruff,* 90 L. ed. 971, col. 2 mid.; *Northern P. R. Co.* v. *Slaght,* 51 L. ed. 738, 741; *Bliss* v. *Bliss,* 81 F. 2d 411, syll. 2, p. 412, cert. den. 80 L. ed. 1001; *American Bakeries Co.* v. *Vining,* 80 F. 2d 932, syll. 1. See also *Liken* v. *Shaffer,* 64 F. Supp. 435, syll. 56, p. 445, affd. on such gr. 141 F. 2d 877, syll. 12, cert. den. sub. nom. *Wilson* v. *Shaffer,* 89 L. ed. 605 (judgment on demurrer sustaining defense of *statute of limitations* is on merits and is res judicata).

The well settled rule in Puerto Rico, as repeatedly upheld by the insular supreme court, is that *"one cannot test out different lines of defense against the same cause of action by means of different suits"*, and that *the public policy* behind the doctrine *of res judicata requires* parties to marshal all the available facts and law and to present them to the court in one suit. *Laloma* v. *Fernández,* 61 PRR at page 553 mid.; *Vázquez* v. *Santos,* 54 PRR at page 593; *Carrión* v. *Lawton,* 44 PRR 448, syll. 1; *Manrique* v. *Aguayo, et al.,* 37 PRR at pages 320 mid.—321; *Ninlliat* v. *Suriñach,* 27 PRR 69 (the mere fact that the present suit is brought on a different theory amounting to a new cause of action would not alter the situation).

This Hon. Supreme Court of the United States has ruled on such point in the same way, precisely in *Calaf* v. *Calaf, supra,* a case hailing from Puerto Rico. *Calaf* v. *Calaf* (Holmes, J.), 58 L. ed. 645, 232 U. S. 374; *Northern P. R. Co.* v. *Slaght* (1907), 51 L. ed. at page 741, col. 2 bot., 205 U. S. at page 132; *United States* v. *California & O. Land Co.* (Holmes, J.), 48 L. ed. 476, and at page 479, col. 1 mid., *followed by the insular supreme court in Laloma* v. *Fernández, supra.* In said *California & O. Land Co., supra,* the United States Supreme Court by Justice Holmes stated: *"Now it seeks the same conclusion by a different means * * * in this as in the former suit it seeks to establish its own title to the fee * * * But the whole tendency of our decisions is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot split up his claim * * * and, a fortiori, he cannot divide the grounds of recovery."*[19]

[19] In a citation heretofore made by respondent, it is also reiterated that: "The application of the doctrine of res judicata to identical causes of action does not depend upon the identity or differences in the forms of the two actions. A judgment upon the merits bars a subsequent suit upon the same cause, *though brought in a different form of action, and a party therefore cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.*" *American Jurisprudence,* Vol. 30, § 175, at page 919.

If the Opinion of the Court of Appeals (Supp. R. 560 bot.) frankly concedes that *"it is hard to see any substantial difference between the case at bar and Calaf* v. *Calaf, supra, upon which the appellants heavily rely"*, it is patently clear that the judgment of the insular supreme court in the instant litigation, as now affirmed, *should be held to be obviously and inescapably wrong, since it is manifestly and demonstrably inconsistent with the law and decisions in Puerto Rico and in the United States, to the effect that a judgment like that rendered in prior suit No. 783, is an absolute bar to a second attempt to reach the same result by a different medium or method.* And even the local Supreme Court recognizes that it is an unavoidable judicial duty to follow applicable rulings established by this highest court of the Nation. *Del Rosario, et al.* v. *Rucabado, et al.*, 23 PRR 438, syll. 1.

III. In not holding that Juan A. Monagas, petitioners' ancestor, had acquired title by adverse possession, as held between the same parties in prior Case No. 783, the judgment under review is manifestly irreconcilable with deeply rooted principles and well-settled local law.

Juan A. Monagas, petitioners' predecessor, was in open and uninterrupted possession, as owner, of Vidal and his heirs' (respondent and his mother) alleged interest in Belvedere farm since he bought from Beauchamp in 1923, under a recorded deed (R. 256-260, Exhibit 6), which is in Puerto Rico a good or just title.

It is also unquestionable that such possession has been repeatedly confirmed, judicially, in favor of the Monagas family, petitioners herein, thru proceedings Nos. 6889, 10,416 and 783, hereinbefore considered. Judgment in No. 10,416 even imposed the condition of discharging a $20,000 mortgage-lien to relieve Vidal's heirs of all liability, and Juan A. Monagas duly fulfilled said condition. The good faith of a possessor is not only always presumed in Puerto

Rico, but in the case at bar it has been actually recognized and established by the very fact of the aforesaid three earlier judgments in Monagas' behalf. Judgment in No. 783, which went against respondent here, in part held that deceased co-appellant below, Juan A. Monagas, *had acquired title to Vidal's share in Belvedere farm by adverse possession for more than 10 years* (R. 342 mid.—349 mid.), *since the complaint in No. 783 did "not overcome the presumption of just title claimed by Monagas, inasmuch as the irregularities * * * alleged * * * were not sufficient to destroy this presumption."* The former judgment in No. 783, along with cases 6889 and 10,416, most obviously bar this subsequent suit to attain the same object "though brought in a different form", as the law emphatically forbids it (see II, sub. div. B, *ante*).

The above uncontroverted factual sketch involved in the defense of adverse possession urged by petitioners in the present case (R. 112 mid., 115 bot., 116 top, 140 bot.), undeniably shows that the judgment of the supreme court of Puerto Rico, as affirmed by the Court of Appeals, *is manifestly irreconcilable with local law and the following well-established principles and precedents:*

A. That Beauchamp's conveyance to Monagas since 1923, as later judicially confirmed, was and is sufficient to transfer ownership and is a *just title* within *Section 1852, Civil Code of Puerto Rico,* under the insular adverse possession doctrine. *Picart* v. *De León,* 22 PRR 553; *Teillard* v. *Teillard,* 18 PRR 546, syll. 3; *Martorell* v. *Ochoa,* 25 PRR 707, syll. 1, 3; *Mateo* v. *Mateo,* 28 PRR 461; *Heirs of Gutierrez* v. *Pons et al.,* 32 PRR 639, syll. 1; *Delgado* v. *Encarnación,* 35 PRR 273, syll. 3, page 276 top; *Heirs of Juarbe* v. *Amador,* 42 PRR 355, 359 mid.; *Calderón* v. *Sociedad Auxilio Mutuo,* 42 PRR 400, 407 mid.; *Annoni* v. *Nadal,* 50 PRR 499, syll. 7, 503 bot.; *Annoni* v. *Heirs of Nadal,* 59 PRR 638, syll. 4 (affd. *Annoni* v. *Nadal's Heirs,* 135 F. 2d 499); *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. 500; *People* v. *Livingston,* 47 F. 2d 712, 717, col.

2; *Díaz* v. *Pérez,* 54 F. 2d 588, 593, col. 2; *Baldrich* v. *Barbour,* 90 F. 2d 868, 871.

B. That a *just title does not mean a perfect title,* as otherwise prescription would not be needed. *Fernández & Bros.* v. *Ayllón y Ojeda,* 69 L. ed. 211, 266 U. S. 144; *Heirs of Juarbe* v. *Amador,* 42 PRR 355, syll. 2; *Martorell* v. *Ochoa,* 25 PRR 707, syll. 3 (a possessor need not have a perfect title in order to hold in good faith).

C. That possession in *good faith* under a just title *is presumed* (*Civil Code, ed. 1930,* § 377; see Appdx. A); and good faith is always presumed, and any person averring bad faith on the part of a possessor, is bound to prove the same (*Civil Code, ed. 1930,* § 364, 1850, Appdx. A; *Nuñez et al.* v. *Heirs of Rivera,* 19 PRR 736, syll. 1).

D. And that Monagas, *"having received his title by judicial proceedings • • • acquired a 'just' or 'proper title' thereto, and he and his heirs, after ten years of uninterrupted and open possession, acquired dominion title."* This is the express wording and apposite decision in *People of Porto Rico* v. *Livingston* (CCA 1), 47 F. 2d 712, 717, col. 2; see also *United States* v. *Fullard-Leo,* 331 U. S. 256, 91 L. ed. 1475.

From the date of the deed of sale and acquisition by Monagas (17 May 1923, R. 249 bot.) to the initiation of the instant cause (November 16, 1942, R. 2 mid.), obviously more than 10, and even more than 19 years of adverse possession by Monagas had transpired (*Civil Code,* ed. 1930, § 1857; see Appdx. A).

WHEREFORE, in view of the substance, importance and gravity of the questions presented, it is respectfully prayed that a writ of certiorari herein be granted.

December 13th, 1948.

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JOSÉ SABATER

by JOSÉ A. POVENTUD
Attorneys for petitioners

Appendix "A"

Provisions of the Civil Code of Puerto Rico, ed. 1930:

"*Section 153.*—The father and the mother have, with respect to their children not emancipated: 1. The duty of supporting them, keeping them in their company, educating and instructing them in accordance with their means, and representing them in the exercise of all actions which may redound to the benefit of such children. * * *"

"*Section 159.*—The exercise of the *patria potestas* does not authorize the father or the mother to alienate or lay any encumbrance upon real property of any class whatever, or upon personal property, the value of which exceeds five hundred dollars, pertaining to the child and which may be under the administration of its parents, without the previous authorization of the district court wherein the property is situated and the demonstration of the necessity and utility of the alienation or encumbrance and in accordance with the provisions of the law relative to special legal proceedings. * * *"

"*Section 212.*—The tutor shall require the authorization of the proper district court: * * * 5. To alienate or encumber the real property which constitutes the capital of the minor or incapacitated person or to make contracts or execute acts requiring recording; also to alienate personal property, the value of which exceeds two hundred dollars, and to execute lease contracts for a longer period than six years; but in no case shall the contract be entered into nor the authorization granted for a period of time in excess of that required by the minor to become of age."

"*Section 364.*—Good faith is always presumed, and any person averring bad faith on the part of a possessor, is bound to prove the same."

Appendix "A"

"*Section 377.*—The possessor who believes himself owner has in his favor the legal presumption that he possesses under a just title and he cannot be compelled to show the same."

"*Section 1204.*—* * * Only a judgment obtained in a suit for revision (*i. e.,* direct appeal) shall be effective against the presumption of the truth of the *res adjudicata.* In order that the presumption of the *res judicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such. It is understood that there is identity of persons whenever the litigants of the second suit are legal representatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of prestations among those having a right to demand them, or the obligation to satisfy the same."

"*Section 1850.*—Good faith of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could convey his title."

"*Section 1852.*—By a proper title is understood that which legally suffices to transfer the ownership or property right, the prescription of which is in question."

"*Section 1857.*—Ownership and other property rights in real property shall prescribe by possession for ten years as to persons present, and for twenty years with regard to those absent, with good faith and proper title."

Appendix "B"

Provisions of the Puerto Rico Code of Civil Procedure, 1933 edition:

"*Section 56.*—When an infant or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending, in each case, or by a judge thereof. * * *"

"*Section 118.*—Every pleading must be subscribed by the party or his attorney; and when the complaint is verified * * * the answer must be verified. * * * In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters, that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a party. * * *"

"*Section 132.*—Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true. * * *"

"*Section 313.*—The defendant in any action may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accepts the offer, and give notice of acceptance, the secretary must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence on the trial; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs accruing subsequently to the offer, but must pay the defendant's cost from the time of the offer."

Appendix "C"

Puerto Rico Rules of Civil Procedure, No. 17, subdiv. (f), 60 PRR, Appdx., p. 16 bot.

"(f) *Infants, Etc., to Appear by Guardian.—When an infant* or an insane or incompetent person *is a party, he must appear by his father or mother with patria potestas,* if living, and *in default thereof,* by his general guardian, or by a guardian *ad litem* appointed by the court in which the action is pending, or by a judge thereof, in each case. A guardian *ad litem* may be appointed in any case, when it is deemed by the court taking cognizance of the matter, or by a judge thereof, that the infant, insane or incompetent person be represented by such guardian *ad litem,* notwithstanding he may have a general guardian and may have appeared by him."

Supreme Court of the United States

OCTOBER TERM, 1948

No. 461

ANIBAL MONAGAS Y DE LA ROSA, ET AL.,
HEIRS, ETC., ET AL.,
Petitioners,

v.

NEFTALI VIDAL-GARRASTAZU,
Respondent.

PETITIONERS' CONCISE REPLY TO BRIEF IN OPPOSITION

JOSÉ A. POVENTUD,
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Respondent.

PETITIONERS' CONCISE REPLY TO BRIEF IN OPPOSITION

(Rule 38, subdiv. 4a)

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

I. Accuracy of petitioners' statement of the case.

Contrary to respondent's unwarranted assertion (his brief, p. 2), *petitioners' short statement fully depicts the pertinent factual situation involved here.* It contains all that is material to the consideration of the questions presented (Petition, pp. 2-8). On the other hand, it is respectfully submitted that respondent's appended (Appdx, pp. 1-9) so-called statement of events is misleading, because of

essential omissions of important facts and in view of groundless comments respecting proceedings and judgments in, at least, prior cases Nos. 10,416 and 783, which are unquestionably *res judicata* herein (see Petition, pp. 8-14, 16-36).

II. Sufficiency of questions presented and of reasons relied upon for allowance of certiorari.

A. Manifest conflict with applicable insular and federal precedents.

The *questions presented* and the *reasons relied on* for a certiorari (Petition, pp. 8-11, 11-14), *clearly exhibit a direct conflict with, and a violent departure from, firmly settled local law and the applicable local decisions* (Rule 38, subdiv. 5(b)), *prior as well as subsequent to judgment below.* Clear violence has also been done to specially apposite precedents set up by this Hon. Court (Petition, pp. 11-14). This is uncontrovertibly shown in *Petitioners' Brief,* pp. 16-36, which respondent has not seriously refuted. The Court of Appeals has not only discarded the decisions of this Court in *Calaf* v. *Calaf,* 58 L ed at p 645, 232 US 371, *Angel* v. *Bullington,* 91 L ed 832, *Heiser* v. *Woodruff,* 90 L ed 971, 327 US 726, among other multiple controlling decisions, *though conceding their appositeness particularly regarding the Calaf case* (R. 560 bot; 170 F 2d 106; *Petitioners' Brief,* pp. 33-36), but it has gone so far as to most erroneously rely, respecting the great public policy doctrine of *res judicata* here involved, *on a dissent in Angel* v. *Bullington,* 330 US 183, 201 *et seq.* (R. 561, note 3; *Monagas* v. *Vidal,* 170 F 2d 106 bot, footnote 3), *instead of enforcing and cordially applying the binding authority of this Court's majority decision therein.* Such ruling is also in direct conflict with that of the Fourth Circuit Court of Appeals in *Ditchman, Wright & Pugh* v. *Weade* (May 13, 1948), 168 F 2d 914, syll. 2, and at page 916, where Judges

Parker, Soper and Dobie held themselves "not at liberty to decide what merit lies" in a dissenting opinion rendered by the Federal Supreme Court, and concluded with this appropriate reminder for an orderly administration of justice: *"The Supreme Court, in the majority opinion, has spoken and we must follow"* (168 F 2d 916, col. 2 mid).

B. The sound and uniform application of the *res judicata* doctrine is a matter of local and national public concern in the administration of justice.

The *correct and uniform enforcement* of the *res judicata* doctrine is a matter of obvious national public interest and of great public concern in the administration of justice. It directly affects also the more than two million peoples of Puerto Rico. These American citizens are equally entitled to the benefits of public order, the respose of society and the quiet of families, *which are the lofty ends of justice and public policy behind the sound application of the fundamental and substantial doctrine of res judicata.* Those basic considerations have led this highest national Tribunal to urge the salutary *requirement that the rule should be cordially regarded and enforced by the courts. Hart Steel Co.* v. *Railroad Supply,* 61 L ed at p 1153, col. 1 bot, followed by the Puerto Rico Supreme Court itself in *Cintrón* v. *Yabucoa,* 54 PRR 493, syll. 3, page 499 top. The court below has prejudicially failed to follow such guiding principle, in lightly brushing aside, in the instant cause, at least two valid judgments rendered for petitioners in prior cases Nos. 10,416 and 783, between the same parties and involving the same matters.

It is urged, with all due respect, that the *res judicata* rule, being as it is a universal principle of public policy, should not be sterilized, nor even belittled, as unwarrantedly attempted by respondent, by merely labeling or calling it a matter of local law or practice, a fortiori when this Court has expressly held that *the doctrine, as applied*

in Puerto Rico, is substantially the same which prevails in continental United States (*Calaf* v. *Calaf*, 58 L ed at p 645, col. 1 mid; *Petition*, p. 13). Lastly, it should be recalled that this Hon. Court has reviewed and reversed lower courts, because of misapplication or departure from the *res judicata* rule which inescapably *concerns the orderly and uniform administration of justice* (cases in *Petition*, p. 14 mid).

III. Plain conflict or inconsistencies with well settled local law and the applicable insular and federal precedents in not holding prior judgments in Cases No. 10,416 and 783 to be *res judicata* herein.

A. Earlier judgment in No. 10,416.

1. *The questions presented involve a manifest clash with deeply rooted local principles and with applicable local and federal decisions prevailing prior and after the judgment herein.*

Respondent contends that the local supreme court has the right to reverse itself in the construction of local law (Brief in Opposition, p. 4 bot). But that simply misses the point. Such, for instance, as the question arising from the decision below that a judgment consented to by a mother with *patria potestas* over her minor son needs, *in an adversary action*, previous determination of necessity and utility by the very district court rendering the judgment under review. Petitioners' Brief, pp. 18-27, adequately shows that in Puerto Rico the established, inveterate practice and the unchanged well-settled local law and decisions, as existing before and after the judgment in the instant case, determine that in exercise of the parental right of *patria potestas*, parents absolutely represent their minor children *in inter-parte judicial proceedings*, such as was the earlier case No. 10,416, *without need of any previous*,

really superfluous judicial authorization; that the provisions of the local special act relative to *ex parte applications* for judicial authorization concerning alienation of minors' property are *inapplicable to adversary court proceedings;* that according to controlling federal and local decisions, even supposed lack of evidence is unavailing to trench upon the effect, as *res judicata,* of judgment in former case No. 10,416; that also in accord with local law and unquestioned federal precedents, *infants are bound by consent judgments* in actions wherein they are represented by their parents, a fortiori when such adjudications admittedly are, as here, for the benefit of the minor, as sworn to by respondent's mother in prior case No. 10,416 (R. 461 mid), where petitioners' ancestor, Juan A. Monagas, in complying with a condition in prior judgment No. 10,416, fully discharged a $20,000 mortgage-lien to relieve Vidal's heirs (respondent and his mother) of liability thereunder (*Petitioners' brief,* p. 25).

2. *Prior judgment in No. 10,416 cannot be collaterally impeached nor invalidated even if supposedly erroneous, which is not the case.*

Respondent claims that case No. 10,416 was a declaratory judgment to establish two allegedly *"erroneous legal conclusions"* (his brief, p. 5 mid). *But a judgment cannot be collaterally impeached merely because it was supposedly based "upon an erroneous view of the law",* which could have been corrected only by a direct review, and not through another action upon the same matter. *Baltimore SS Co* v. *Phillips,* 71 L ed 1070, syll. 5, p. 1074; *Stokke et ux* v. *Southern Pac. Co.,* 169 F 2d 42, syll. 2, p. 43; *Montgomery* v. *Equitable Life Assur. Co.,* 83 F 2d 739, syll. 12. And it is of no moment that the consent judgment in prior case No. 10,416 was not entered after full trial as intimated by respondent (his opposing brief, p 5 top). *In Puerto Rico, as in other jurisdictions, a consent decree*

admits the facts of the complaint, and cannot be collaterally assailed. Ex parte Morales (1911), 17 PRR 1004, 1006 bot; *Suárez* v. *Betancourt* (1945), 64 PRR 448, syll. 3 and 4; *Harding* v. *Harding*, 49 L ed 1066; *Snell* v. *J. C. Turnell Co.*, 285 Fed Rep 356, syll. 2, and at pages 358 bot. Even an alleged lack of evidence is unavailing to trench upon the *res judicata* doctrine. *Heiser* v. *Woodruff*, 90 L ed 971, syll. 8, 327 US 726; *Amadeo* v. *Compañía Azucarera del Toa*, 58 PRR 756, syll. 2, and at page 761 (*Petition*, pp. 21-22). It should also be recalled that the insular supreme court itself conceded that former judgment in No. 10,416 "*dealt with the same cause of action now before us, and concerned the same parties*" (R. 487 top).

B. Prior judgment in case No. 783.

Respondent states that judgment in prior action No. 783 is not *res judicata* on these minor grounds: (1) because the former action was *in rem* while as he erroneously asserts the present case for alleged liquidation of a dissolved partnership is in *personam;* and (2) in view that judgment in No. 783 was upon a demurrer, and so respondent thinks it was not on the merits (Brief in opposition, pp. 6-7).

1. Action in prior case No. 783 and the instant cause are not dissimilar; they comprise slightly different means to achieve the same object.

Respondent's first alleged point is successfully met by *Petitioners' Brief*, at pages 33-36. It is there elaborately shown that prior case No. 783 and the present action embody substantially the same means to attain the same result and that, therefore, the decision of this Hon. Supreme Court in *Calaf* v. *Calaf*, 58 L ed at p. 645, is decisive as to the conclusiveness of judgment in former suit No. 783. Furthermore, in No. 783, respondent and his mother like-

wise claimed that defendants therein (the Monagas) *"should proceed to liquidate and settle with the plaintiffs* [respondent and his mother], *by delivering to them all the fruits, rents, profits and utilities* yielded by the share corresponding to them in 'Belvedere Estate', *from September 17, 1921 until its final liquidation* and delivery, plus the corresponding legal interest" (R. 304 top: complaint in No. 783). Therefore, *it is evident that suit No. 783 and the case at bar involve identical causes for the alleged liquidation of the dissolved partnership Monagas & Vidal's only asset,* which consisted of the Belvedere farm (R. 483 top).

Respondent is additionally wrong in suggesting that an action for liquidation and settlement of real assets upon dissolution of a civil partnership is an action *in personam. In Puerto Rico it is a statutory action in rem.* The Civil Code of Puerto Rico, ed. 1930, *Section 268,* provides that a partner's right, after dissolution of the partnership, to claim liquidation and distribution of realty (immovables), *produces a real and not a personal action. Section 268, supra,* positively states:

> *". . . If the association be dissolved, the right which any of its members may have to claim the division of the immovables or a participation therein, shall produce an immovable action."*

2. *Judgment in earlier suit No. 783, though on demurrer, bars the instant litigation.*

Respondent's next contention is that judgment in case No. 783 is no bar to the present action because prior judgment in No. 783 was grounded on a demurrer. Such position is wholly untenable. Petitioners' *Supporting Brief* (at page 34, footnote 18), citing a vast body of authorities, conclusively demonstrates that in Puerto Rico, as in continental United States, it is a well-established and firm rule

that *"where a court in rendering judgment sustaining a demurrer for insufficiency of the complaint does not grant leave to amend, such judgment is a bar to another action between the same parties and upon the same facts."* This is also conceded by the Court of Appeals when it held that *"It is hard to see any substantial difference between the case at bar and Calaf* v. *Calaf, supra* [which also involved a prior judgment on demurrer], upon which appellants [petitioners here] heavily relied . . ." (See petitioners' brief, p. 34; R. 560 bot; 170 F 2d 106, col. 1 mid). The accepted rule in the United States, as concluded by this Hon. Court in *Angel* v. *Bullington,* 91 L ed 833, syll. 9, *Heiser* v. *Woodruff,* 90 L ed 971, col. 2 mid, and other ably reasoned and binding precedents, *is that a judgment on demurrer bars a subsequent litigation on the same cause, though brought in a different form of action or adopting a different method of presenting the case* (see petitioners' brief, p. 34, footnote 18, and page 35).

IV. Impropriety of respondent's reference to supposed misrepresentation in prior action No. 10,416, and respecting petitioners' title by adverse possession.

A. Regarding action No. 10,416.

Petitioners respectfully submit that respondent's allusion to any alleged misrepresentation concerning judgment in earlier case No. 10,416, and his attempt to connect it with petitioners' good faith in the adquisition of title by adverse possession (brief in opposition, pp. 4 bot, 5 top, 8-9), are entirely unwarranted. No averment as to fraud appears in the complaint in the present case (R. 1-5, 75-80). The 17-page opinion and judgment rendered by the Mayaguez trial court show no finding to have been made therein concerning any supposed misrepresentation (R. 146-164). The trial court evidently regarded respondent's mother's profferred testimony on such supposed misrepresentation

either wholly incredible[1] or ruled it out at the request of petitioners' trial counsel (R. 212 top, 212 mid, 213 bot). Yet, the Puerto Rico Supreme Court, on appeal, *unexpectedly* made the following statement: "Vidal's widow [respondent's mother] consented in writing to judgment [in prior action No. 10,416] for plaintiffs [petitioners]. As she now explains (without being contradicted by Monagas), she signed the written consent at the request of Juan Monagas, while confined in a clinic, and relying on his false representations regarding the contents and effect of the document" (R. 479 mid; but see footnote 1, *ante*). Thereupon, petitioners urged before the Court of Appeals a serious constitutional point of procedural due process: that in *unexpectedly reinstating* an issue ruled out by the Mayaguez trial court, without petitioners having presented their evidence because of that ruling, and in

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[1] Respondent's mother's oath or verification to her consenting answer to complaint in No. 10,416 (R. 461 mid) established beyond any doubt that she *could not have physically signed and made oath to her consenting pleading at Perea's Clinic on May 16, 1924, as she testified* (R. 211 mid), *since that pleading, on its face, definitely proves that she verified and subscribed the document on precisely the same date in the very presence of the clerk of the Mayaguez trial court* (R. 461 bot), *at a place and before persons quite different from those mentioned by Vidal's widow.* Dr. Perea's affidavit, as medical-director of the Perea's Clinic, at Mayaguez, also shows that *respondent's mother left Perea's Clinic on January 18, 1924* (R. 535 top), *some four months before May 16, 1924* (R. 461) *when she falsely stated to have been an inmate in that Clinic* (R. 211 mid) at the signing of answer to complaint in prior case No. 10,416 (R. 211-213). *May 16,* as already stated, was precisely the date when respondent's mother appeared before the clerk of the Mayaguez trial court to personally verify her consenting answer in case No. 10,416 (R. 461 bot). That testimony, *opposed by obvious physical facts,* could not be credited by any court, even though it might have stood uncontradicted. *Deadrich* v. *United States,* 74 F2d 619; *United States* v. *Hansen,* 70 F2d 230, syll. 4 (physical facts must control); *Walkup* v. *Bardsley,* 111 F2d 789, syll. 3; *Carter* v. *Kurn,* 127 F2d 416, syll. 4; *Galloway* v. *United States,* 130 F2d 467, syll. 10, affd *Galloway* v. *United States,* 87 L ed 1460; *Quock* v. *United States,* 35 L ed 501.

proceeding to adjudge that issue and the case against petitioners herein, *the supreme court of Puerto Rico acted inconsistently with the record and the decision of this United States Supreme Court in Saunders* v. *Shaw,* 244 U S 317, 320, 61 L ed 1163, 1165, col. 2 bot.

The Court of Appeals, referring to said question of due process of law, stated: *"But the Supreme Court of Puerto Rico did not dispose of the case at bar on the ground of any fraud practiced by the above Monagas* [petitioners' ancestor] *upon the plaintiff* [respondent here]. *It disposed of the case upon other grounds altogether and hence the above statement if erroneously made is immaterial."* (*Monagas* v. *Vidal,* 170 F 2d 107; R. 563). Respondent himself, expressly stated in his brief before the Court of Appeals (his Appdx to brief in opposition, pp. 36-37), that: *"The Finding was Immaterial to the Judgment in the Present Case",* which exhibits even respondent's conviction or infelt realization as to the falsity or incredibility, as well as to the immateriality of the testimony on the supposed misrepresentation. Respondent additionally conceded (his Appdx, pp. 36-37) that such unanticipated statement by the insular supreme court "was neither essential nor necessary to the judgment", that it was "completely irrelevant because . . . the amended complaint herein does not charge the appellants [petitioners herein] with any fraud or fraudulent conduct", and that the judgment in the case at bar was "decided on other grounds".

In view of the foregoing, is it fair or proper for respondent to inject in his opposing brief here any issue or question on alleged misrepresentations which were even by respondent admitted to be, and by the Court of Appeals held, immaterial and which did not serve as basis of the decisions below?

B. Respecting petitioners' title by adverse possession.

As to the good faith and just title through adverse possession in petitioners' ancestor, it was a matter explicitly thus adjudicated in prior case No. 783 (R. 342 mid-349 mid). That former judgment in case No. 783, whether right or wrong, is *res judicata* in this subsequent litigation between the same parties. *Baltimore SS Co.* v. *Phillips*, 71 L ed 1070, syll. 5, p. 1074; *Heiser* v. *Woodruff*, 90 L ed 971, syll. 11. Petitioners have duly shown, in their Brief, pp. 36-38, that in not upholding such earlier judgment in No. 783, the Court of Appeals manifestly ignored the binding requirements of local law and of supporting insular and federal precedents (Petition, pp. 36-38).

In short, respondent has utterly failed to disturb petitioners' clear showing of plain inconsistencies with well-settled local practices and the obligatory decisions of this Hon. Court, particularly as it all affects the orderly and cordial application of the public policy doctrine of *res judicata*.

WHEREFORE, petitioners' prayer that a writ of certiorari be granted herein, is respectfully reiterated.

Ponce, Puerto Rico, January 12, 1949.

JOSÉ A. POVENTUD,
JOSÉ SABATER,
by JOSÉ A. POVENTUD,
Attorneys for Petitioners.

Copy of petitioners' foregoing reply was served by registered mail on R. Castro Fernández, Esq., P.O. Box 2926, San Juan, Puerto Rico, as attorney for respondent, this 12th day of January, A.D., 1949.

JOSÉ A. POVENTUD,
Of Counsel for Petitioners.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 461

ANIBAL MONAGAS-DE LA ROSA, *et al.*,
Petitioners,

vs.

NEFTALI VIDAL-GARRASTAZU,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

JAMES R. BEVERLEY,
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SUBJECT INDEX.

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Supreme Court of the United States

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Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The respondent herein respectfully submits that there is no reason whereby this Honorable Court should exercise its discretion in granting the writ of certiorari prayed for by the Petitioners herein, because in the present case:

(a) There is no Federal question involved. (Rule 38 (5)a)

(b) There is no conflict between the decision of the Circuit Court of Appeals and applicable local decisions in the application of the doctrine of *res judicata*, the only question of local law involved in this case, (Rule 38 (5)b), and

(c) The decision of the Supreme Court of Puerto Rico confirmed by the United States Court of Appeals for the First Circuit, is clearly correct.

Opinions Below.

The opinion of the Supreme Court of Puerto Rico is reported in *Vidal* v. *Monagas,* 66 D. P. R. 622, (Spanish Edition) and its English translation is in the printed record (R-477-493).

The opinion of the United States Court of Appeals for the First Circuit is reported in *Monagas* v. *Vidal,* 170 F. (2d) 99.

Jurisdiction.

The jurisdiction of this Honorable Court has been invoked under Section 1254 of the new Title 28 of the United States Code "Judiciary and Judicial Procedure."

Statement of the Case.

As the Statement of the Case made in the Petition for Certiorari is inaccurate and various important facts have been omitted, we respectfully submit that a correct summary appears on pages 100 to 103 of the Circuit Court opinion. A statement of all the facts in chronological order appears on pages 2 to 10 of the "APPENDIX" (*infra*).

Question Presented.

The only question presented is whether the Supreme Court of Puerto Rico correctly applied, in the present case, the local Puerto Rican theory of *res judicata,* and we respectfully submit that irrespective of the importance of the question from the *local* point of view, there is no *national* public interest which requires this Honorable Court to grant the writ prayed for. *Magnum Import Co.* v. *Coty,*

262 U. S. 159; 67 L. Ed. 922; *Ruhlin* v. *N. Y. Life Ins. Co.*, 304 U. S. 202; 82 L. Ed. 1290.

Errors Assigned in Petition.

"I.—The affirmatory judgment of the Court of Appeals, in not accepting as *res judicata* the former judgment in suit No. *10416*, is clearly in conflict with recognized existing *local law* and with applicable insular and federal precedents.

II.—The Court of Appeals' failure to uphold another prior judgment in case No. *783*, as *res judicata* in the instant litigation, is also plainly inconsistent with prevailing statutory and decisional *local law*, and the apposite federal precedents.

III.—In failing to hold that Juan A. Monagas, petitioners' ancestor, *had acquired title by adverse possession*, as held between the same parties in earlier case No. *783*, the judgment under review is manifestly inconsistent with deeply rooted principles and the well-settled *local law*."

ARGUMENT.

A. NO FEDERAL QUESTION INVOLVED:

From a mere glance at the assignment of errors it is evident that in this case there is no federal question involved. (Rule 38(5)a).

B. NO CONFLICT WITH DECISION OF ANOTHER CIRCUIT COURT:

Nowhere in the Petition for Certiorari or in the Brief is there the slightest contention that the decision rendered by the Circuit Court in the present case is in conflict with

a decision of another Circuit Court on the same matter (Rule 38(5)b).

C. NO CONFLICT WITH APPLICABLE LOCAL DECISIONS:

In the Petition for Certiorari and Brief, a great effort is made by the Petitioners to accommodate their assigned errors and arguments under the second reason specified in Rule 38(5)b, to wit:

> "b.—Where a circuit court of appeals . . . has decided an important decision of *local law* in a way probably in conflict with applicable local decisions . . ."

In order to do so, the Petitioners established the false premise that the decision of the Circuit Court in the present case is in conflict with local decisions. Respondent respectfully submits that in confirming the judgment of the local Supreme Court, the Circuit Court, in the present case, decided the question of local law *in accordance with* the local decision.

In this respect and for the purpose of argument only, let us concede that the local Supreme Court, in its decision in the present case, went as far as to impliedly reverse itself in the application of the theory of *res judicata*. It is our contention that the local Supreme Court had a perfect right to reverse itself in the interpretation of local law, especially in a case like the present one, where through the application of the theory of *res judicata* the Petitioners have been seeking protection for their fraudulent scheme to eliminate Respondent, a defenseless minor, first, as co-partner of the partnership "Vidal & Monagas", and later, as joint co-owner of the "Belvedere Farm".

Special attention is called to the fact that *neither the judgment in Case No. 10416 nor that in Case No. 783 was entered after trial on the merits;* the first being a void judgment consented to by Respondent's mother while he was a minor, through misrepresentation and fraud;[1] and without the proper Court authority;[2] and the second a judgment on demurrer, based on lack of sufficient facts to constitute a cause of action.[3] In so doing, what was done by the local Supreme Court was to apply the doctrine of *res judicata,* as a rule of judicial administration, to the particular situation disclosed in the conclusions of facts, as justice and sound application of the policy behind the doctrine required.[4]

D. LOCAL SUPREME COURT'S DECISION, CONFIRMED BY THE CIRCUIT COURT, IS CLEARLY CORRECT.

1. The former judgment in Case No. 10416 was not *res judicata* in the present case.

Case No. 10416 was a declaratory judgment to establish two erroneous legal conclusions, to wit:

(a) That the partnership "MONAGAS & VIDAL" was dissolved because of the execution sale in former Case No. 6889, when in accordance with local law, this was no ground for the dissolution of a partnership; and

(b) That the Petitioners' ancestor acquired the one-third interest in the Belvedere Estate belonging to Respondent's father, through the execution sale in said case, when

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[1] *Vidal* vs. *Monagas,* 66 D. P. R. 622 at 627 (R-478 bot.). *Monagas* vs. *Vidal,* 170 F. 2d 99 at 101 bot.

[2] *Vidal* vs. *Monagas,* 66 D. P. R. 622 at 635 (R-487 mid.). *Monagas* vs. *Vidal,* 170 F. 2d 99 at 104 bot.

[3] R-350. Judgment in Case No. 783.

[4] Restatement of Law, Judgments. Sec. 70.

as a matter of fact, at the time of the sale the "Belvedere Farm" belonged to the partnership "Vidal & Monagas" (a separate legal entity) and Respondent's father did not have any interest in said real estate. (See APPENDIX P. 16-18:—*"The Execution of Judgment in Case No. 6889 was Academic"* and P. 19:—*"The Causes of Actions were Different"*.)

Irrespective off the fact that it is legally impossible to change the law or its effect through a consent declaratory judgment, the judgment entered in Case No. 10416 was clearly void, in accordance with well-settled local law, because valuable rights of the Respondent, while a minor, were alienated and surrendered without evidence of the necessity and utillity to the minor of the alienation.[5]

For a detailed discussion of this point see APPENDIX, P. 20-25 "B.—*The Judgment in Case No. 10416 was Clearly Void.*"

2. The former judgment in Case No. 783 was not *res judicata* in the present case.

The action in Case No. 783 was for the recovery (revendication) of a share in the "Belvedere Farm", which is an *action in rem.* The defendants therein (Petitioners' ancestor and other co-owners) demurred to the complaint for failure to state a cause of action, misjoinder, nonjoinder, prescription and *res judicata* (R. 305-314). The District Court sustained the demurrer for failure to state a cause of action and for prescription and entered judgment dismissing the complaint on the ground that it was not susceptible of amendment, (R-349, 350), therefore, the judgment was not a judgment after trial, on the merits of the case.

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[5] *Vidal* vs. *Monagas*, 66 D. P. R. 622 at 635. (R-487 mid.).

A judgment on demurrer may be or may not be on the merits. It is not on the merits when rendered because of an omission of an essential allegation in the complaint,[6] as happened in Case No. 783, where the District Court held the omission to be that the plaintiff did not offer to restore to the defendant Juan A. Monagas, the sum he paid to Beauchamp for a supposedly one-third interest in the "Belvedere Farm" (R-355; 486) and furthermore no facts were alleged in the complaint to justify the erroneous conclusion that Monagas had obtained title by adverse possession during ten years with just title.[7]

For a more complete and detailed argument on this point see APPENDIX p. 25-33: "POINT III OF APPELLEE'S BRIEF BEFORE CIRCUIT COURT."

3. Circuit Court did not err in failing to hold that Petitioners' Ancestor acquired title by adverse possession.

From the assignment of this third and last error it is evident that the Petitioners have forgotten that the present case is exclusively an *action in personam* for the liquidation of a dissolved partnership, and that no issue was presented or could have been presented as to the prescription of the right to recover an interest in real estate.

As a matter of fact in no former case was this question ever litigated and determined. On the contrary, in Case No. 783 this question was raised on demurrer, but nowhere in the complaint is there any allegation from which the District Court could reach the conclusion that Petitioners' ancestor acquired title by prescription.

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[6] Restatement of Law, Judgments 198 Sec. 50. *Durant* vs. *Essex Co.*, 74 U. S. 107; 109. *Insular Board of Election* vs. *District Court*, 63 P. R. R. 786; 798. *Laloma* vs. *Fernández*, 61 P. R. R. 550.

[7] See comments on this point in Opinion of local Supreme Court R-481 f. n. 3 and 4.

In accordance with Section 1857 of the Civil Code of 1930 in order to acquire title by adverse possession during ten years, the existence of "good faith and proper title is essential"; and from the allegations in the complaint in Case No. 783 (R-285, 304) it clearly appears that the title acquired by Petitioners' ancestor was not only a void title but also a fraudulent and academic title; transferring no right whatsoever in the "Belvedere Farm" which was exclusively owned by a third person; and that the recording of the same was so tainted with fraud that not only the local Supreme Court,[8] but also the Circuit Court[9] in their respective opinions made the following comment:

> "Monagas then succeeded, *we cannot understand how,* in recording the one-third interest in the Belvedere Estate in his name, despite the fact that the whole property was already recorded in the name of the partnership of Monagas & Vidal." (Italics supplied).

Furthermore, it was alleged in the complaint in Case No. 783 that Petitioners' ancestor through misrepresentation and fraud obtained the consent of Respondent's mother, while he was a minor, to the consent declaratory judgment in Case No. 10416 (R-298), in an attempt to perfect the recording of the title.

In this respect the local Supreme Court in its opinion (R-479 mid.) made the following comment:

> "Vidal's widow consented in writing to judgment for plaintiffs. As she now explains (without being contradicted by Monagas) she signed the written consent at the request of Juan Monagas, while confined in a clinic, *and relying on his false representa-*

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[8] *Vidal* vs. *Monagas,* Opinion—R-478 bot.
[9] *Monagas* vs. *Vidal,* 170 F. 2d 99 at 101 bot.

tion regarding the contents and effect of the document." (Italics supplied).

And the Circuit Court in its opinion (P-107) commenting on the above transcribed statement of the local Supreme Court, stated as follows:

> "But *the statement of the Supreme Court of Puerto Rico was not erroneously made.* The record shows that the plaintiff's mother testified without contradiction at the trial of the instant case in the insular District Court that in May 1924, when she was confined in a clinic recovering from an operation, Juan A. Monagas came to see her and after general conversation, she said, *'we agreed that he would prepare a document whereby it would be provided that my son would receive his share when he became of legal age in the same way as the children of José Arturo Monagas.'* " (Italics supplied).

Under all these circumstances, it is evident that Petitioners' ancestor did not obtain the just title which is required by the local Civil Code and that his bad faith is obvious.

Conclusion.

The judgments below are correct. The questions really involved are only of local law. There is no question of national public interest to be reviewed by this Honorable Court and the petition for writ of certiorari should be dismissed.

Respectfully submitted,

JAMES R. BEVERLEY,
R. CASTRO FERNANDEZ,
Attorneys for Respondent.
By: R. CASTRO FERNANDEZ

Copy of this brief was served by registered mail on José A. Poventud, Esq., Box 266, Ponce, Puerto Rico, as attorney for the Petitioners, this 30th day of December 1948.

R. CASTRO FERNANDEZ,
Attorney for Respondent.

APPENDIX.

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STATUTES.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1947.

No. 4265.

JUAN A. MONAGAS ET AL.,
Appellants,

v.

NEFTALI VIDAL GARRASTAZU,
Appellee.

BRIEF FOR THE APPELLEE.

PRELIMINARY.

This case involves the application of the rules of *res judicata* and of collateral estoppel by judgment.

OPINION BELOW.

The opinion of the Supreme Court of Puerto Rico is reported in *Vidal* v. *Monagas,* 66 D.P.R. 622, (Spanish Advance Sheet No. 5) and its English translation is in the printed record. (R. 477-493.)

JURISDICTION.

The jurisdiction of the Honorable Court has been invoked under Section 128 (a) (4) of the Judicial Code as amended (28 U.S.C.A. 255 (a) (4)). This is a civil action wherein the value in controversy, exclusive of interest and costs, exceeds $5,000, but no Federal question is involved, inasmuch as those raised in the Statement of Points are not in fact involved, as will be shown in the discussion of said points.

STATEMENT OF THE CASE.

As the Statement of the Case made in Appellant's brief and the Statement on Appeal filed herein do not give an exact picture of the material facts involved in the present case and in the previous cases, we consider that such statement, in chronological order, will be very helpful, in order to supplement the statement made by the local Supreme Court in its opinion. (R. 478-483.)

STATEMENT OF IMPORTANT EVENTS IN CHRONOLOGICAL ORDER.

1. Feb. 9, 1905: On this date the civil agricultural partnership "Monagas & Vidal" was organized (1) (R. 218) by Jose A. Monagas, Juan A. Monagas and Ramiro Vidal, for the term of ten years, which was later extended to June 30, 1924 (R. 227); each partner with an equal interest in the partnership and in payment of their share in the capital of the partnership each partner transferred and assigned to the partnership: (a) the 1/8th share which they owned in a farm known as "Belvedere Farm"; (b) their 1/3 interest in the lease to the remaining 5/8th share in said farm, and (c) their 1/3 interest in the sugar cane plantation cultivated in said farm. The deed of constitution of said partnership expressly provides that the partnership was to continue until the expiration of its term in the event of the death of any partner (R. 222).

2. March 18, 1907: The partnership of "Monagas & Vidal" acquired by purchase the remaining 5/8th share in the "Belvedere Farm". (R. 235, 239.)

3. April 30, 1915: The partner Jose A. Monagas died (R. 76) leaving as his sole and universal heirs his children, Margarita, Jose, Carmen, Gladys and Iris Monagas-Nadal, his

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(1) A partnership is a legal entity in Puerto Rico. *People* v. *Russell & Co.*, 288 U.S. 476; 482; 77 L. Ed. 903; 908.

widow Carmen Nadal-Cabassa and his grandchildren Jose, Carmen, Gladys and Iris Monagas-Vidal, (Defendants but not Appellants herein).

4. September 27, 1918: Case No. 6889—*Mora* v. *Ramiro Vidal* (Action of Debt): On this date a complaint was filed by Jose Mora against Ramiro Vidal to recover the sum of $800 principal amount of a note executed by defendant, Ramiro Vidal, to the order of Vincente Pagan which was endorsed by him to the plaintiff, plus interest and costs. (R. 430.)

5. February 14, 1919: Default judgment was entered against Ramiro Vidal in Case No. 6889.

6. August 17, 1921: The partner Ramiro Vidal died, (R. 176) leaving as sole and universal heir his son Neftali Vidal (Plaintiff-Appellee herein) and his widow Juana Garrastazu (One of the defendants but not appellant herein).

7. March 27, 1923: In Case No. 6889—*Mora* v. *Vidal:* Ramon Beauchamp appeared and requested subrogation in place and right of plaintiff alleging that Mora assigned to him the judgment entered in said case. (R. 437). In the Motion for Subrogation no allegation is made of Ramiro Vidal's death nor was the motion served on his attorney nor on his heir, and the District Court entered the requested order of subrogation without a hearing. (R. 438.)

8. April 2, 1923: In Case No. 6889—*Mora* v. *Vidal:* R. Beauchamp, as substituted plaintiff, filed motion alleging that the defendant Ramiro Vidal died and requested the substitution of his son Neftali Vidal and of his widow Juana Garrastazu, as party defendant, and the District Court entered the requested order without notice and without a hearing. (R. 441.)

9. April 9, 1923: In Case No. 6889—*Mora* v. *Vidal:* Beauchamp obtained order of execution and the Marshall of the District Court of Mayaguez levied and attached "every

right, title and interest which defendants may have" in the "Belvedere Farm". (R. 445). (²)

10. May 17, 1923: In Case No. 6889—*Mora* v. *Vidal:* Marshal sold to Beauchamp for $900 'every right, title and interest that said defendants had in the aforesaid property", to wit, in "Belvedere Farm". (R. 499.)

11. May 18, 1923: Beauchamp purported to sell to Juan A. Monagas (Appellant herein) the ⅓ interest he acquired, the day before, at public sale on execution of the judgment in Case No. 6889.

12. March 19, 1924: Case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal* (Declaratory Judgment): On this date a complaint was filed by Juan A. Monagas on his own behalf and as tutor of his minor children against the heirs of Ramiro Vidal, to wit: Neftali Vidal, minor son and Juana Garrastazu, his widow, alleging in sustance: (1) the constitution of the partnership "Monagas & Vidal"; (2) the extension of the partnership's term to June 30, 1924; (3) the purchase by the partnership of the remaining ⅝th interest in Belvedere Farm; (4) the recording of the entire Belvedere Farm in the name of the partnership; (5) the death of Jose A. Monagas and the names of his heirs; (6) the death of Ramiro Vidal and the judicial declaration of the defendant Neftali Vidal, (then a minor) and of the defendant Juana Garrastazu as his only heirs; (7) the fact that the partnership continued in operation and existence in spite of the death of two of the three partners; (8) the attachment and sale to Ramon Beauchamp on execution of the judgment in Case No. 6889 of the right and share (condominio) that the heirs of Ramiro Vidal had in the Belvedere Farm and the

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(²) Belvedere Farm was on the date of the attachment exclusively owned by the partnership and remained so until June 30, 1924 date of dissolution by the expiration of the partnership's term.

erroneous conclusion (3) that by virtue of said sale the heirs of Ramiro Vidal remained without any share or right in the partnership; (9) the mortgage lien of $20,000 on the Belvedere Farm; (10) the request on and consent of defendant Juana Garrastazu, mother of the minor Neftali Vidal, to the execution of the corresponding deed of dissolution of the partnership and her impediment to do so, as mother of said minor, without court's authority. (R. 453-457). In said complaint the plaintiffs pray for judgment decreeing:

(1) That the partnership had been dissolved because of the sale at public auction of Ramiro Vidal's share in the partnership capital;

(2) That the plaintiff Juan A. Monagas was the owner of 1/3 interest in Belvedere Farm as partner of the partnership "Monagas & Vidal"; the children of Jose A. Monagas were the owners of the 1/3 interest the deceased Jose A. Monagas had as partner of the said partnership and that the remaining 1/3 interest is now owned by the plaintiff Jose A. Monagas by purchase from R. Beauchamp.

(3) That the Belvedere Farm be recorded in the Registry of Property in the name of the plaintiffs in the above proportion.

(4) That the plaintiffs acquired said shares with the mortgage lien, the defendants being relieved from the payment of said debt. (R. 457, 458.)

13. May 16, 1924: In case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal:* The defendant Juana Garrastazu in her own right and as mother with *patria potestas* over her minor son Neftali Vidal appeared and consented in writing to the entry of the judgment prayed for, stating, in the verification of said motion, that the consented judgment

(3) Erroneous conclusion because of the fact that in no occasion the rights, title and interest of Vidal or of his heirs in the partnership had ever been attached.

was beneficial to the interest of her minor son inasmuch as they were relieved from paying the liens encumbering the Belvedere Farm. (R. 460, 461.)

14. May 17, 1924: In Case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal:* District Court entered judgment in accordance with the prayer of the complaint without either party presenting any evidence as to the necessity and convenience to the minor defendant to consent said judgment nor any other evidence whatsoever. (R. 462.)

15. June 30, 1924: "Monagas & Vidal" partnership term expired (R. 227) thus causing the dissolution of the partnership and the vesting of the title of the properties of the partnership on the partners, jointly and undividedly (4).

16. February 9, 1938: Case No. 783—*Neftali Vidal* v. *Juan A. Monagas et al.* (Revendicatory Action): On this date Neftali Vidal, then of full age, filed and amended complaint (5) against Juan A. Monagas, the heirs of Rosario de la Rosa (deceased) wife of Juan A. Monagas), the heirs of Jose A. Monagas and the heirs of Ramon Beauchamp for the recovery (revendication) of the "1/3 interest in the Belvedere Farm" he inherited from his father Ramiro Vidal (6), alleging in substance, (R. 285-303): who are the parties plaintiff and defendants; the filing of Case No. 6889—*Mora* v. *Vidal* (Action of Debt); the default judgment in Case 6889; the conspiracy between Juan A. Monagas and Ramon Beauchamp to fraudulently appropriate the share of Ra-

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(4) *Chardon* v. *Laffaye*, 43 P.R.R. 623; *Chardon* v. *Laffaye*, 46 P.R.R. 889; *Miramar Realty Co.* v. *Registrar*, 44 P.R.R. 808; 811.

(5) The date on which the original complaint was filed does not appear in the record.

(6) It is important to note that Neftali Vidal, plaintiff in said case, did not inherit from his father, Ramiro Vidal, any right, title or interest in the "Belvedere Farm", which at the time of his death (Aug. 17, 1921) was exclusively owned by the partnership. It was not until June 30, 1924, (date when the partnership's term expired) that Neftali acquired his interest in the "Belvedere Farm".

miro Vidal in the "Belvedere Farm"; the subrogation and substitution of party plaintiff and party defendant in Case 6889; the lack of notice thereof to the defendants in said case; the issuance of the order of execution in said case; the sale at public auction to Beauchamp of "every right, title and interest the defendants had in the Belvedere Estate"; the sale by Beauchamp to Juan A. Monagas of the acquired rights, title and interest in said farm; the constitution of the partnership "Monagas & Vidal"; the extension of the partnership term to June 30, 1924; the form in which the partnership acquired title and became owner of the entire "Belvedere Farm"; the death of Jose A. Monagas and the names of his heirs; the filing of Case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal* (Declaratory Judgment); the entering of the judgment and its execution; the fraud in obtaining Mrs. Garrastazu's consent to entry of the judgment prayed for, while seriously ill and under promise to return to her minor son Neftali Vidal when he should reach his majority of age, all the property belonging to his father; Monagas' refusal to deliver the same to Neftali Vidal when he reached his majority; Juan A. Monagas' illegal appropriation of the total share that Ramiro Vidal held and possessed in the Belvedere Estate and Monagas' appropriation of all the rents, fruits and utitlies produced by the Belvedere Farm; and Neftali's right to the entire ⅓ share his father had in the Belvedere Farm subject to the usufruct belonging to his mother, because the same was the private property of his father. After alleging legal grounds to support plaintiff's contention that the sale at public auction, the deed executed by the Marshal, the deed of purchase by Monagas from Beauchamp and the recording thereof were null and void, the plaintiff prayed for judgment as follows (R. 303):

(a) Declaring null and void and ineffective the petition for subrogation and substitution; the order of execution; the writ of execution; the notice of attachment; the sale at public auction; the Marshal's deed of sale in Case No. 6889 —*Mora* v. *Vidal* (Action of Debt), and the deed of sale from Beauchamp to Juan A. Monagas.

(b) Declaring null and void the judgment rendered in Case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal* (Declaratory Judgment); its execution and the Marshal's deed in compliance with said judgment.

(c) Annulling every entry in the Registry of Property as to the ⅓ interest in Belvedere Estate belonging to Ramiro Vidal.

(d) Ordering defendants to deliver and surrender to plaintiffs the share in the Belvedere Farm which belonged to their predecessor Ramiro Vidal and to deliver to them all the fruits, rents, benefits and utilities produced by the said share in the Belvedere Farm.

(e) Ordering defendants to pay to the plaintiffs the sum of $100,000, value of the ⅓ condominium in the Belvedere Estate plus $64,000 representing the total value of the fruits, rents, etc. produced by the said condominium.

17. March 3, 1941: In Case No. 783—*Vidal* v. *Monagas* (Revendicatory Action): Defendants' demurrer to the complaint for failure to state a cause of action, misjoinder, nonjoinder, prescription and *res judicata.* (R. 305-314.)

18. March 6, 1942: In Case No. 783—*Vidal* v. *Monagas* (Revendicatory Action): District Court sustained demurrer for failure to state a cause of action and for prescription, and entered judgment dismissing the complaint on the ground that the complaint was not susceptible of amendment. (R. 349, 350.)

19. November 16, 1942: Present Case—*Vidal* v. *Monagas* (Liquidation of Partnership): On this date the original complaint was filed before the District Court of Mayaguez, Puerto Rico, which was later amended (R. 75) to allege in substance as follows: (1) the constitution of the partnership "Monagas & Vidal" and the extension of its term to June 30, 1924; (2) the death of the partner Jose A. Monagas and the names of his heirs; (3) the death of the partner Ramiro Vidal, father of the plaintiff-appellee herein, and the name

of his heirs; (4) the death of Rosario de la Rosa, wife of the partner Juan A. Monagas, a defendant and appellant herein, and the names of her heirs; (5) the description of the properties of the partnership at the time that the partnership's term expired; (6) the management of the properties of the partnership by the other partners from the death of Ramiro Vidal, (when plaintiff was 5 years old) to date, without the intervention of the plaintiff or of his mother; (7) the dissolution of the partnership by the expiration of its term on June 30, 1924; the fact that the partnership has never been liquidated; the fact that neither the plaintiff nor his mother received any share of the rents and profits yielded by the properties of the extinguished partnership calculated in $500,000; (8) the ownership of plaintiff of the entire share which belonged to his father; the request on defendants to carry out the liquidation, partition, division and adjudication of the said partnership and of its properties and their refusal to do so.

The prayer of the complaint is for judgment ordering the liquidation of the partnership; the rendering of accounts; the partition, division and adjudication among the plaintiff and defendants of the properties of the partnership and of its rents and profits. (R. 75-79.)

20. January 31, 1945: This Case: On this date the District Court of Mayaguez, Puerto Rico, after trial on the merits, entered judgment ordering the liquidation of the partnership "Monagas & Vidal" on the ground that its term has expired and has not been liquidated, although it owned properties which must be liquidated and partitioned among the partners and/or their successors in interest and providing that if the partners or their successors fail to agree to carry out the liquidation, the Court will appoint a commissioner to do so. (R. 163).

21. November 12, 1946: This Case: On this date the Supreme Court of Puerto Rico entered the judgment appealed from, confirming the judgment of the lower court after modifying the same insofar as to exclude the heirs of Jose A. Monagas from the payment of attorney's fees.

APPELLEE'S POSITION.

I. The Supreme Court of Puerto Rico was right in rejecting the plea of *res judicata* to Case No. 6889.

II. The local Supreme Court was right in holding that the former judgment in Case No. 10416 was not *res judicata* in the present case.

III. The Supreme Court of Puerto Rico was right in rejecting the plea that the judgment in Case No. 783 is *res judicata* in the present case.

IV. The Appellants were not deprived of due process by the finding on Monagas' misrepresentations to Vidal's widow which was predicated on testimony admitted without objection by the trial Court.

V. The Court below correctly held void the proceedings after judgment in Case No. 6889 and the deed of judicial sale to the 1/3 interest in "Belvedere Farm" without the joinder of Beauchamp's heirs as defendants.

VI. The Court below was correct in not holding that co-appellant Juan A. Monagas acquired title by adverse possession to Vidal's share in "Belvedere Farm".

ARGUMENTS.

PRELIMINARY.

It will be helpful if this Honorable Court will keep in mind that a civil partnership such, as "Monagas & Vidal", is in Puerto Rico a juridical person, completely separate and independent of its partners, with most of the characteristics of a corporation, until dissolution. *People* v. *Russell & Co.*, 288 U.S. 476; 482; 77 L. ed. 903, 908.

Point I.

The Supreme Court of Puerto Rico was Right in Rejecting the Plea of Res Judicata as to Case No. 6889.

There is a fundamental distinction between the theory of *res judicata* and the theory of collateral estoppel by judgment and said distinction is that a matter is *res judicata* when in the former suit and in the subsequent suit there is a concurrence of (1) identity of subject matter, (2) identity of parties and (3) identity of causes of action; while the defense of estoppel by judgment is only raised when the causes of action are different (7).

When there is identity of matters, parties and causes of action, through the theory of *res judicata* the judgment on the prior case is conclusive not only as to matters actually litigated and determined but also as to matters, which might have been litigated and determined in the first suit (8).

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(7) *Cromwell* v. *County of Sac.*, 94 U.S. 351; 352; 24 L. Ed. 195.
United States v. *Moser*, 266 U.S. 236.
Tait v. *Western Md. Ry. Co.*, 289 U.S. 620; 623.
Scott, Collateral Estoppel by Judgment, 56 Harvard Law Review 2.
2 Freeman on Judgments (5th Ed.) Sec. 671.
50 C.J.S. 13 Sec. 593.

(8) *Angel* v. *Bullington*, 91 L. Ed. 557.
People v. *Lugo*, 64 P.R.R. 529; 533.
Mestre v. *Michelena*, 30 P. R. R. 142.
Manrique v. *Aguayo*, 37 P.R.R. 314.
Restatement of Law, Judgments, p. 159.

Where, however, the subsequent action between the same parties is based upon a different cause of action the judgment is only conclusive as to matters actually litigated and determined (9).

Under both theories the judgment must be on the merits (10) and the matters litigated and determined must be essential to the judgment. (11).

Bearing in mind these elemental principles of the theories of *res judicata* and estoppel by judgment, clearly adopted not only by our local Supreme Court but also by this Honorable Court, and by the Supreme Court of the United States (12), let us now analyze the judgment in Case No. 6889 in order to determine if the cause in said case is the same as the cause of action in the present case.

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(9) *Mendez* v. *Bowie,* 118 F (2) 435.
State Farm Mutual Auto Ins. Co. v. *Duel,* 324 U.S. 154; 84 L. Ed. 812; 814.
Baltimore S.S. Co. v. *Phillips,* 274 U.S. 317; 71 L. Ed. 1069.
Cromwell v. *Co. of Sac.,* 94 U. S. 351; 24 L. Ed. 195.
Restatement of Law, Judgment 159; 300.

(10) *Melendez* v. *Cividanes,* 64 P.R.R. 4; 11.
Insular Board of Elections v. *District Ct.,* 63 P.R.R. 786; 798.
Restatement of Law, Judgments, 193 Sec. 49.

(11) Restatement of Law of Judgments, 293; 309 Sec. 68.
50 C.J.S. 209; Sec. 723.
50 C.J.S. 213; Sec. 725.

(12) *Angel* v. *Bullington,* 91 L. Ed. 557. Appellants rely strongly on this case as holding that a prior judgment is a bar to subsequent litigation not only as to matters actually litigated and determined, but also as to all matters which could have been litigated and determined. We respectfully submit that the *Angel* case is just a ratification of the correct theory of *res judicata* and not an alteration of the theory of collateral estoppel by judgment, more so when it appears from the opinion (p. 559) that in said case the identity of matters, parties and causes of action was such that the complaint in said case "was a carbon copy of the complaint" in the former case.

A. *The Cause of Action in Case No. 6889 is Different From That in the Present Case.*

1. As appears from paragraph 4 of the foregoing "Statement of Important Events", the cause of action in Case No. 6889 (*Mora* v. *Vidal*) was one of debt, for the recovery of the sum of $800 principal amount of a promissory note executed by the Appellee's father to the order of Vincente Pagan and endorsed by him to Jose Mora, plaintiff therein. The causes of action in the present case being for the liquidation of the dissolved partnership "Monagas & Vidal", it is clear that there is no identity of causes of action and therefore the theory of *res judicata* does not apply.

2. The cause of action in Case No. 6889 being different to that in the present case, the next step is to determine what matters were actually litigated and determined by the judgment in former case, and the answer is: That the indebtedness of Ramiro Vidal, Appellee's father, to the plaintiff Jose Mora as holder of the note, was the only matter determined by the judgment.

It is Appellants' contention that the proceedings in Case No. 6889 were *res judicata* in the present case because, contrary to what the local Supreme Court held, neither the order of substitution of party defendant nor the execution of the judgment in said case, was void (Brief Point I (C) pages 9 to 21); but this is a non-sequitur. What constitutes a bar to the subsequent case is the judgment in the prior case and not the proceedings therein, more so if the challenged proceedings were after judgment ([13]).

B. *The Order of Substitution of Party Defendant in Case No. 6889 was Void.*

1. As appears from paragraph 8 of the Statement of Important Events (*supra*), Beauchamp as substituted plaintiff

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([13]) 50 C.J.S. 35 Sec. 613.
34 C. J. 763 Sec. 1177.

in Case No. 6889 filed a motion alleging the death of Ramiro Vidal, the defendant therein, and requested the substitution of his son Naftali Vidal and his widow Juana Garrastazu as parties defendant, and the District Court entered the requested order without notice and without a hearing.

In accordance with Section 244 of our Code of Civil Procedure, an order of execution cannot be entered in the case of the death of the judgment debtor except when the judgment is for the recovery of real or personal property.

Sec. 244 Code Civil Procedure 1933:

> "Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced as follows:
>
> 1. In the case of the death of the judgment creditor, upon the application of his executor, or administrator, or successor in interest.
>
> 2. In the case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property."

Commenting on said Section 244, our local Supreme Court in *Fernandez* v. *Velasquez,* 17 P.R.R. 716; 725, which was a case for the recovery of real estate, held that:

> "When the death of the defendant occurs, the court rendering the judgment should be notified thereof, and a motion should be filed requesting that the execution be levied against the estate of the deceased, giving to said estate such intervention in the proceedings as corresponds to a real interested party."

Therefore, in accordance with Section 244 of our Code of Civil Procedure, the order of execution in Case No. 6889 was void for two reasons: (1) because said case being for the recovery of money and not for the recovery of real or personal property, the Court had no authority to enter it,

and (b) because the heirs of the defendant therein were not notified nor were they given the intervention that due process guarantees to all party in interest ([14]).

2. The local Supreme Court held that the proceedings in Case No. 6889 did not constitute a defense to the plaintiff's claim in that defendant's heirs were not served with notice of their substitution as parties defendant citing *Rosas* v. *Heirs of Bruno*, 41 P.R.R. 143 (R. 488). Appellants in their brief (p. 10) contend that the cited case is wholly different and inapposite because the order of substitution of defendants in said case was entered before judgment.

It is true that in the *Rosas* case the substitution was before judgment, nevertheless, said case is authority for the holding of our local Supreme Court in the established principle, that the heirs of a defendant must have notice and opportunity to be heard before they are substituted as parties defendant. *Fernandez* v. *Velazquez*, 17 P.R.R. 716, 725.

3. The procedure to substitute the heirs is different when the defendant dies before judgment, in which case Sections 43 and 69 of our Code of Civil Procedure apply, than when the defendant dies after judgment, in which case an order of execution can be only issued in the case of recovery of real or personal property, and in said case the procedure is in accordance with Section 244 of our Code of Civil Procedure interpreted in the light of the provisions of Section 69 of the same Code. *Fernandez* v. *Velasquez*, (*supra*).

4. Appellants cite the case of *Ramirez* v. *District Court*, 49 P.R.R. 129, in support of their contention, but as appears from the opinion in said case, the motion for substitution was made and the heirs of the deceased defendant had been

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([14]) *Fernandez* v. *Velazquez*, 17 P.R.R. 716; 725.
Casanova & Co. v. *Court Tax Appeals*, 61 P.R.R. 55; 57.
Mitchell v. *St. Maxent's Lessee*, 71 U.S. 237; 242.
Restatement of Law, Judgment, 36 Sec. 6.

summoned to appear, therefore, in said case the proper procedure was followed in accordance with Sections 43 and 69 of our Code of Civil Procedure.

C. *The Sale on Execution of Judgment in Case No. 6889 was Void.*

The order of execution being void, the execution of the judgment and the sale on execution are necessarily also void and non-existent ([15]) and the plaintiff-appellee herein was under no obligation either to allege nor to prove that said order, execution and sale were void in order to obtain a decree for the liquidation of the partnership.

Lompre v. *Diaz,* 237 U.S. 512; 519:

> "In the light of this conclusion we are of the opinion that the lower court committed no error in overruling the challenge made by the answer to the capacity of the plaintiff to sue in revendication (ejectment) upon the assumption that he was bound first to seek the rescission of the partition proceedings and to obtain an annulment of the order of the judge approving the same, since it is impossible to conceive that the preliminary duty exist to obtain the annulment of that which was already null or to seek to rescind that which never in contemplation of law had any existence whatever."

D. *The Execution of Judgment in Case No. 6889 was Academic.*

1. The order of execution issued in Case No. 6889 did not specify what property was to be attached or levied on in order to collect the judgment (R. 443); therefore, it was at

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([15]) *Mitchell* v. *St. Maxent's Lessee,* 71 U.S. 242 cited in *Fernandez* v. *Velazquez,* 17 P.R.R. 716; 724: Purchasers at a judicial sale are not protected, if the execution on which the sale was made was void. Void process confers no right on the officer to sell and all acts under it are absolute nullities." See also *Casanova & Co.* v. *Court Tax Appeals,* 61 P.R.R. 55; 57.

the request of the plaintiff that the Marshal of the Court attached "every right, title and interest which defendants may have in the Belvedere Estate". (R. 445.)

What was advertised for sale on execution (R. 446) and what was really sold on execution (R. 449) was "every right, title and interest that said defendants had in the aforesaid property", although the defendant at the time of the attachment and at the time of the sale only had an interest in the partnership, because of the fact that the attachment was levied on April 9, 1923 (R. 445) and the sale on execution was made on May 17, 1923 and it was not until June 30, 1924 that the partnership "Monagas & Vidal" was dissolved by expiration of its term (R. 227).

As the partnership "Monagas & Vidal" was at the time of the attachment and of the sale on execution the exclusive owner of the Belvedere Farm, the local Supreme Court was clearly correct in holding that even if the execution of the judgment in said case was not void, it was academic, for what was sold, to wit: the interest of the heirs of Vidal in the Belvedere Estate, did not exist, hence the execution sale even if it was not void, could not and did not grant to Monagas or take from Vidal's heirs any right (R. 488; 489). It was not until June 30, 1924, date on which the partnership term expired that the title to the dissolved partnership property vested in the partners jointly and undividedly ([16]).

2. It is Appellants' contention that Vidal's heirs are estopped from attacking the inefficacy of the execution sale because of the fact that they later (over one year after the execution sale) acquired the undivided interest in the Belvedere Estate and through the theory of implied warranty, said acquisition inured to the benefit of the purchaser at

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([16]) See cases cited in Foot Note 4.

said sale, citing as authority the case of *Veve Diaz* v. *Sanchez*, 57 L. Ed. 201 (Brief 20).

This decision is entirely inapposite because as it appears from said case the appellee Sanchez executed a mortgage wherein he stated that he was the owner of the property mortgaged, when in fact he was the owner of part of said property and later acquired the rest. As the National Supreme Court said: "having received the money on the faith of the statement that he was the owner of the property, he was bound to repay that sum; or, failing that, to perfect the title on which the money had been advanced", therefore the *Veve* case is clearly one of estoppel by deed.

In the present case Vidal's heirs were under no obligation whatsoever to perfect the title to the interest in Belvedere Farm which the Marshall illegally levied and sold on execution, and in no occasion did they make any statement whatsoever through which an estoppel could be raised.

3. It is also Appellants' contention that because the deed of judicial sale was recorded in the Registry of Property, Beauchamp had title to convey to Monagas (B. 18), but this contention is contrary to Section 33 of our Mortgage Law which expressly provides that the recording does not convalidate acts or contracts which are null and void ([17]).

4. In summary, at the time of the attachment and at the time of the sale, Vidal's heirs had no right, title and interest in the Belvedere Farm. They only had an interest in the partnership, interest which we concede could have been, but was not, attached or levied on, and the Marshal having attached and sold an interest which did not exist, the result of said sale was that Beauchamp acquired nothing and therefore, transferred nothing to Monagas.

([17]) *Fajardo Sujar G. Assoc.* v. *Kramer*, 45 P.R.R. 337; 366.
Heirs of Mandes v. *Heirs of Aguero*, 43 P.R.R. 278.
Ayllon v. *Gonzalez*, 28 P.R.R. 61; 69.
Fernandez v. *Velazquez*, 17 P.R.R. 716; 726.

Point II.

The Local Supreme Court was Right in Holding that the Judgment in Case No. 10416 was not Res Judicata in the Present Case.

A. *The Causes of Actions were Different*

Although the local Supreme Court held that the causes of action were the same (R. 487) we respectfully submit that said Court went too far in so holding.

Case No. 10416 was an action for a Declaratory Judgment and its object was to obtain the declaration of two erroneous legal conclusions, to wit:

(a) That the partnership of "Monagas & Vidal" was dissolved because of the sale, on execution in Case No. 6889, of the share in the partnership capital owned by Vidal's heirs: and

(b) That Monagas acquired the 1/3 interest in Belvedere Estate belonging to the heirs of Vidal through the sale on execution of the judgment in Case No. 6889.

The first conclusion is erroneous because in no occasion was the interest of Vidal's heirs in the partnership levied or attached, and furthermore, when the judgment was entered in Case No. 10416, the partnership's term had not expired.

The second conclusion is erroneous because as hereinbefore shown, by the sale on execution in Case No. 6889 no interest in the Belvedere Farm was conveyed and therefore Monagas acquired none.

Under those circumstances, can it be said that the cause of action in Case No. 10416 is identical to the cause of action in the present case? Does not the fact that said case being for the judicial declaration of two erroneous conclusions of law makes the cause of action different from that of the present case? The evidence in support of the allegations in Case No. 10416 would have clearly established the error of the conclusion therein prayed for, and

the fact that the partnership was not then dissolved, while the evidence in the present case clearly established the dissolution of the partnership and the fact that no interest in the partnership was sold on the execution sale in Case No. 6889 ([18]).

The causes of action being different the judgment by confession entered in Case No. 10416 is neither *res judicata* nor an estoppel to the cause of action herein ([19]).

B. *The Judgment in Case No. 10416 was Clearly Void.*

1. The defendant herein, Juana Garrastazu as mother with *patria potestas* over her then minor son, Neftali Vidal (appellee herein) filed a motion consenting to the entry of the judgment prayed for, stating in the verification of said motion that the consent to the judgment is beneficial to the interest of her minor son because he was relieved from the payment of the liens encumbering the "Belvedere Estate". (R. 460, 461.)

On the next day the Court entered judgment without either party presenting any evidence as to the necessity and convenience for the minor to consent to said judgment, nor any other evidence whatsoever. (R. 462.)

Section 159 Civil Code of 1930, provides as follows:

> "The exercise of the *patria potestas* does not authorize the father or the mother to alienate or lay any encumbrance upon the real property of any class whatever * * * without the previous authorization of the District Court wherein the property is situated and the demon-

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([18]) The same evidence test has been considered "the best and most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties, and it has even been designated as infallible." 30 Ame. Jur. 981, Sec. 174.

See also: *Encarnacion* v. *Maeso*, 48 P.R.R. 468.

Restatement of Law, Judgments, 248 Sec. 61.

([19]) Restatement of Law, Judgments, 304 Sec. 68.

stration of the necessity and utility of the alienation or encumbrance and in accordance with the provisions of the law relative to special legal proceedings."

Section 80, Law of Special Legal Proceedings (Sec. 614 Code Civil Procedure of 1933), provides as follows:

"In all cases where, according to the provisions of the Civil Code, the parents or the tutors of a minor or incapacitated person, shall be in need of judicial authority to do anything relative to the keeping of said minor or incapacitated person or of his property, a petition shall be filed with the District Court of competent jurisdiction, setting forth under oath the following particulars:

1. . . .

2. . . .

3. . . .

4. The necessity or utility for the minor or incapacitated person of the act petitioned for."

Section 81, Law Special Proceedings (Sec. 615 of Code Civil Procedure) provides as follows:

"Upon the filing of the petition, if this be in proper form, the court shall fix the date for the examination of the proof relative to the facts alleged . . . with the attendance of the district attorney whose duty shall be to protect the rights of the minor or incapacitated person."

"The documentary proof shall comprise the demonstration of the *patria potestas* or the tutorship and if the authorization should apply to real estate, then the title of ownership and the assessment of the property for the purpose of taxation, if subject to tax, shall also be included."

. . . . .

"The proof having been examined, the judge shall grant or deny the authorization asked for in conformity with the result of the proof adduced, his decision being subject to appeal to the Supreme Court of Puerto Rico either by the petitioner or the district attorney."

The act of the mother of the minor in consenting to the judgment was clearly an act of alienation which needed judicial authority because the consent to the judgment involved the waiver by the minor of rights which were worth many thousand dollars (R. 487) in exchange for his being relieved of the obligation of paying the encumbrance on his share in the Belvedere Farm.

Lompre v. *Diaz,* 237 U.S. 512 (Syl.):

"Under the laws of Puerto Rico a widow and guardian *ad litem* had no authority to give the property of the minor child in payment of a debt of a deceased father in private sale and there was no authority in any judge to approve such a voluntary partition as was involved in this action.

"A disposition of a minor's property by private sale in Puerto Rico unauthorized by the local law, even if approved by a judge, is void, and the minor, on coming of age, may sue in ejectment, under the provisions of the Civil Code, then in force and applicable in this case, without first seeking rescission of the partition." ([20])

([20]) See also:

Burset v. *Registrar,* 49 P.R.R. 47.
Cruz v. *Central Pasto Viejo,* 44 P.R.R. 354.
Mercado v. *Registrar,* 41 P.R.R. 521.
Millan v. *Registrar,* 41 P.R.R. 98.
Costa v. *Piazza,* 51 P.R.R. 667.
Rodriguez v. *Cortes,* 51 P.R.R. 587; 588.
Ex Parte Guzman, 32 P.R.R. 428; 431.

From the record it appears that although there was a hearing before judgment, at said hearing no evidence was presented or admitted; the District Attorney was not present nor notified and that the Court only took into consideration the oral argument and the sworn motion whereby the mother of the minor consented to the judgment ([21]).

Having failed to present evidence of the necessity or utility to the minor of the alienation of his share or interest in Belvedere Estate in consideration for his being relieved of his obligation to pay his share in the encumbrance on said farm, the judgment entered in Case No. 10416 is null and void ([22]).

2. Appellants contend that while it is true that for the alienation of minor's property it is necessary to comply with the provisions of Sections 614 and 615 of the Code of Civil Procedure, in case of compromise of a minor's claim or right it is only necessary to obtain the subsequent approval by the Court of the compromise agreement. (Brief, 25, 26.)

While it is true that the difference between alienation and compromise is that in the former, judicial authority is a prior requisite, while in the latter, the judicial approval may be given after the compromise agreement has been entered, there is no other substantial distinction, for in case of compromise the minor as a matter of fact is releasing

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([21]) A petition alone, although verified, is not sufficient.
Gonzalez v. *Roig*, 31 P.R.R. 32; 35.
Lokpez v. *Fernandez*, 61 P.R.R. 503; 534.

The minor is not estopped from attacking the insufficiency of the evidence submitted.

F. Zayas S. en C. v. *Torres*, 51 P.R.R. 772; 779.

([22]) A judgment is void if there is a failure to comply with such requirements as are necessary for the exercise of power by the court.
Restatement of Law, Judgments, Sec. 8 and Sec. 68, p. 295.
Lokpez v. *Fernandez*, 61 P.R.R. 503; 531.
Lompre v. *Diaz*, 237 U.S. 512 (Syl.).

or giving away some right in order to settle, and this in fact constitutes an alienation.

In Case No. 10416, as our local Supreme Court held, the consent to the entry of the judgment involved the waiver by the minor of rights which were worth many thousand dollars (R. 487). This in fact constitutes an alienation of his property, which needed judicial approval after full demonstration by competent evidence, of the necessity and utility for said minor to surrender such valuable rights ([23]) in consideration of his being relieved from paying his proportional share in the encumbrance on the Belvedere Estate.

3. Although appellants have failed to cite one single case in support of their contention that in compromise mere judicial approval is sufficient we respectfully submit that the case of *Burset* v. *Registrar*, 49 P.R.R. 47 is directly in point against said contention.

Said case was one for partition of real estate in which a minor had an interest. After the Court entered judgment declaring the property to be indivisible and ordering the sale at public auction for the minimum price of $3,000, the mother of the minor appeared before the Court and stated that all parties had stipulated and agreed to sell the property to one of the co-owners for the price of $2,700 "as all parties have agreed that the sum of $3,000 was somewhat high", and requested "that the court approve said stipulation as it involved the rights of a minor and that the judgment serve as judicial authorization for the sale." The District Court authorized the sale requested, fixing the value of the property at $2,700 and ordered that the judgment served also as judicial authorization for the sale by the mother on behalf of the minor. The deed of sale was duly executed but

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([23]) In Case No. 10416 no documentary evidence was presented showing the existence of the *patria potestas* in the mother of the minor. This also makes the judgment in said case null and void. *Lokpez* v. *Fernandez*, 61 P.R.R. 503; 535.

was refused recording. The local Supreme Court held that as the compromise involved "a complete alienation of the entire interest held by the minor in the property" (p. 50) and not a partition of common property, the legal requirements of Sections 80, 81 and 82 of the Law of Special Legal Proceedings (Sec. 614; 615 and 616 of Code of Civil Procedure) should have been complied with, and confirmed the Registrar's refusal to record the deed.

4. Appellants also contend that a judicial inquiry was really made by the Court in Case No. 10416 before entering the judgment, but as appears from the record (R. 462) the only thing taken into consideration by the court at the hearing was the "sworn motion" whereby the mother of the minor consented to the judgment prayed for and the verification of said motion alone was not sufficient demonstration of the necessity and utility to the minor. *Gonzalez* v. *Roig*, 31 P.R.R. 32; 35.

Point III.

The Supreme Court of Puerto Rico was Right in Rejecting the Plea that the Judgment in Case No. 783 is Res Judicata in the Present Case.

Bearing in mind the elemental principles of the theories of *res judicata* and estoppel by judgment, stated in "Point I" herein, let us now analyze the judgment in Case No. 783 in order to determine if the cause of action in said case is the same as the cause of action in the present case; if the judgment is on the merits, and what essential matters were actually litigated and determined.

A. *The Cause of Action in Case No. 783 is Different to the Cause of Action in the Present Case.*

1. The action in Case No. 783 was for the recovery (revendication) of the share in the Belvedere Estate which be-

longed to the plaintiffs' predecessor, Ramiro Vidal and for *mesne* profits (R. 303); while the action in the present case is for the final liquidation of the dissolved partnership "Monagas & Vidal" (24).

In a revendication action the essential allegations are: (1) the description of the real estate or interest therein claimed; (2) the title of the plaintiff, and (3) the adverse possession of defendant, while in an action for the liquidation of a partnership the essential allegations are: (1) the constitution of the partnership; (2) its dissolution, (in the present case by the expiration of its term); (3) partnership assets and liabilities at the time of dissolution; (4) the refusal of the partners defendants to liquidate the partnership, to partition and to adjudicate the partnership's properties.

While it is true that the complaint in Case No. 783 contained many other allegations of facts, said allegations were not only not essential, to the cause of action, but were improper allegations of possible anticipatory defenses. For example: the allegation pertaining to the nullity of the judgment in Case No. 10416. This allegation was completely unnecessary because said judgment, as hereinbefore sustained, was null, void and non-existing and its prior declaration to that effect was not necessary. *Lompre* v. *Diaz* (*supra*).

2. The action in Case No. 783 was an action *in rem* for the recovery of an interest in real estate, while the action in the present case is an action *in personam* for the liquidation of a dissolved partnership.

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(24) Counsel for the Appellants admitted that the action in Case No. 783 is a revendicatory action (R. 345; 346), and the District Court reached the same conclusion (R. 347). Counsel also admitted that the present suit is for the liquidation of a partnership (R. 88).

3. The contention of Appellants that both cases involve the same causes of action (Brief 38) because the present case is a "different means to reach the same result", citing *Calaf* v. *Calaf*, 58 L. Ed. 645, is untenable.

In the *Calaf* case (*supra*), the object of the first case was the recognition of the plaintiff therein as natural child (Filiation) and of his right to inherit 1/2 of the estate left by his father (See *Calaf* v. *Calaf*, 17 P.R.R. 185, 204) and the object of the second case was to nullify his father's will and for the distribution of the inheritance intestate among the heirs. As was very logically concluded by our local Supreme Court and by the National Supreme Court, the end and object of both suits was to share in the inheritance; it was in fact a "different means to reach the same result". *Calaf* v. *Calaf*, 232 U.S. 371; 373.

Can the same be said of the present case? Of course not. The end and object of the suit filed in Case No. 783 was to recover 1/3 interest in the Belvedere Estate which was claimed by plaintiff as heir of Ramiro Vidal. As is pointed out by the Court below (R. 483) the action was purely one of revendication and precisely on that ground was it dismissed. Plaintiff did not then have any right to recover 1/3 of the Belvedere Estate. Plaintiff, at the time of the filing of the complaint in Case No. 783, was a co-owner of the Belvedere Farm ([25]), but he did not have a right to recover 1/3 of the Belvedere Estate because at no time has his share in said Farm been determined and its determination depends exclusively on the final liquidation of the part-

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([25]) On dissolution of a civil partnership, title to the properties of the partnership vest in the partners jointly and undividedly, but not in the proportion of their interest in the partnership as was erroneously stated in our "Motion to Dismiss" the appeal of this case. *Chardon* v. *Laffaye*, 43 P.R.R. 623; (Same Case) 46 P.R.R. 890; *Miramar Realty Co.* v. *Registrar*, 44 P.R.R. 808; 811.

nership, ([26]) after payment of all partnership debts and final partition, division and adjudication of the net assets of the partnership, which is the object of the present suit.

4. That the end and object of the present case is different from that in Case No. 783 is also clear from the fact that when the partnership was dissolved it was the owner of not only the entire Belvedere Farm but also of the other personal property (R. 191; 207) and had debts to pay, and crop loan contracts to liquidate (R. 207). Plaintiff certainly has a perfect right to know what became of all the assets of the partnership; how the crop loan contracts liquidated; and to receive in money or otherwise, his share in what remains after payment of all the liabilities of the partnership, and in no previous judgment is there the slightest determination or adjudication in this respect.

5. It has been sustained that "the best and most accurate test" to determine if the second action is for the same cause of action as the first, is whether the same evidence would sustain both actions. 30 Am. Jur. 918, Sec. 174. Applying this test in the present case the obvious result will be that the evidence to sustain the action of revendication in Case No. 783 necessarily will have to be completely different from the evidence necessary to sustain the action for the liquidation of the partnership in the present case. In the former, (revendication) the description of the share or interest in the Belvedere Farm; proof of plaintiff's title to the 1/3 interest in Belvedere Farm and proof of defendants' adverse

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([26]) The determination of the partners' undivided share depends exclusively on the liquidation of the partnership's assets, as was held in *Rosaly* v. *Graham*, 16 P.R.R. 156. The fact that in the *Rosaly* case the partnership was mercantile is immaterial because in both mercantile and civil partnerships the liquidation is essential in order to determine the share of each partner, in the partnership's properties. In the case of a civil partnership the adjudication of the undivided interest is a matter of law, while in the case of a mercantile partnership the adjudication is a matter of agreement between the partners of the dissolved partnership.

possession of said farm, is indispensable, while in the present case said evidence would have been completely immaterial. The evidence necessary to obtain a judgment in favor of plaintiff in the present case consists solely of the constitution and dissolution of the partnership; proof of the fact that the partnership was the owner of certain properties on dissolution, and of the refusal of the defendants partners to liquidate the partnership. This evidence certainly would have been unnecessary and immaterial in Case No. 783.

6. The cause of action in Case No. 783 being different to the cause of action in the present case, the theory of *res judicata* does not apply and the judgment in the former case is only conclusive as to essential matters actually litigated and determined, by judgment on the merits. ([27])

B. *The Judgment in Case 783 was not on the Merits.*

1. The judgment in Case No. 783 was a judgment on demurrer. The complaint was dismissed (a) for lack of sufficient facts to constitute a cause of action; (b) for the prescription of the actions of nullity, and (c) for the prescription of the right to recover the share in Belvedere Farm. (R. 349.)

A judgment on demurrer may be or may not be on the merits. It is not on the merits when rendered because of an omission of an essential allegation in the complaint, or of some defect in the pleadings, or for want of jurisdiction or upon some other ground which did not go to the merits of the case. ([28])

(a) Insofar as the judgment on demurrer in Case No. 783 was based on lack of sufficient facts to constitute a cause of

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([27]) See Foot Note 9.

([28]) Restatement of Law, Judgments, 198 Sec. 50.
Durant v. *Essex Co.*, 74 U.S. 107; 109.
Insular Board of Election v. *District Ct.*, 63 P.R.R. 786; 798.
Laloma v. *Fernandez*, 61 P.R.R. 550.

action, said judgment was not on the merits. The allegation which the plaintiff omitted and which the Court in its opinion held necessary and essential to constitute a cause of action was that plaintiff did not offer to restore to Monagas the sum he paid to Beauchamp for the 1/3 interest in Belvedere Estate. (R. 355; 486.)

Another essential allegation on which the plaintiff failed to allege in his complaint in Case No. 783 was that the partnership was liquidated and his share in Belvedere Farm was determined to be 1/3. This allegation, of course, he could not make because untrue at that time and untrue at present. If true, the plaintiff would have had a perfect right to file a new suit alleging said omitted essential facts and the former judgment (in Case No. 783) would not have been a bar to the subsequent suit. ([29])

(b) Insofar as the judgment on demurrer in Case No. 783 was based on the prescription of the actions of nullity, this question of law was one of several questions of law which were determined but were not essential to the judgment. (R. 486.) Said question was so non-essential that as decided by the Supreme Court of the United States of America in *Lompre* v. *Diaz,* 237 U. S. 512, 519, there was no necessity to obtain an annulment of that which was already null, to wit: the previous judgment in Case No. 10416 and the orders in Case No. 6889, which were void and in contemplation of law had no existence whatever.

(c) Insofar as the judgment on demurrer in Case No. 783 was based on the prescription of the right of Vidal to recover the share in Belvedere Farm, which was another of the questions of law which were determined but were non-essential to the judgment because the complaint was lacking the essential allegation that the partnership had been liquidated and that the plaintiff's share in said farm was actually determined to be 1/3 thereof. As said fact is precisely what

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([29]) Restatement of Law, Judgments, 198; 200 Sec. 50.

would have given the plaintiff a right to recover the 1/3 share in Belvedere Farm, it is obvious that if he had no such right, the same could not have prescribed.

2. Conceding, for the purpose of argument only, that Vidal had a right to recover said interest in the Belvedere Farm and has lost it by prescription, in that case the judgment would have been on the merits and a bar only insofar as said right of revendication is concerned, but is not a bar as to his perfect right to have the partnership liquidated and to receive the share in the net capital of the partnership which he inherited from his father. As it is well to recall, when plaintiff's father died (Aug. 17, 1921) the partnership term had not expired and therefore he inherited rights, title and interest in the partnership and not in the Belvedere Farm which was then and until dissolution (June 30, 1924), exclusively owned by the partnership.

3. Conceding also, for the purpose of argument only, that the cause of action in Case No. 783 was identical to the cause of action in the present case, as the appellants contend then under the theory of *res judicata* what essential matter might have been adjudicated and determined by the judgment in said case? The answer necessarily is that if the judgment was not on the merits as above contended, no essential matter was actually litigated and determined and no one could have been litigated and determined.

If on the other hand the judgment in Case No. 783 was on the merits insofar as prescription of the right of Vidal to recover the 1/3 interest in Belvedere Farm, no other essential matter could have been litigated and determined and much less the right to determine the share of Vidal in said farm, in the absence of the essential omitted allegation to the effect that the partnership had been liquidated.

C. *The Res Judicata and Estoppel by Judgment Theories are Matters of Local Law.*

Before closing the arguments on this point we want to call the attention to the fact that the theories of *res judicata* and of estoppel by judgment are matters of local law and as such each State and Territory has the right to adopt its own interpretation, in conformity with what might be the majority rule, the minority rule or its exclusive rule. Said interpretation will be recognized as good local law unless it is shown to be "inescapably wrong" or "patently erroneous". (*Sancho Bonet* v. *Texas Co.*, 308 U.S. 463.)

Far from being such, the decision on this point is clearly correct and more so if this Honorable Court takes into consideration that our theory of *res judicata* is incorporated in our Civil Code which comes from Spain, and differs from American and English statutory and common law in that while in the latter a substantial identity of matter, causes of action and parties is only required, our Code requires "the most perfect identity" between matter, causes of actions and parties.

Section 1204 Civil Code 1930:

> "In order that the presumption of the *res judicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.
>
> In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the *res judicata* shall be valid against third persons, even if they should not have litigated.
>
> It is understood that there is identity of persons whenever the litigants of the second suit are legal rep-

resentatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of presentations among those having a right to demand them, or the obligations to satisfy the same."

See also: *Municipality of Hatillo* v. *Rios,* 61 P.R.R. 98; *Melendez* v. *Cividanes,* 63 P.R.R. 4; 11. ([30]).

Point IV.

Appellants were not Deprived of Due Process.

It is Appellants' contention that they were deprived of due process because the local Supreme Court made a wholly unexpected finding on the misrepresentations made by co-appellant Monagas to Vidal's widow, based on testimony to which objections had been sustained by the trial court.

The finding to which Appellants refer appears in the "chronological summary of the facts established by the evidence" made by the Supreme Court of Puerto Rico at the beginning of its opinion (R. 478; 479). After referring to the constitution of the partnership; to the procedure in Case No. 6889; to the filing of the complaint in Case No. 10416 and to the consent of Vidal's widow to the judgment in said case, the Supreme Court stated (R. 479):

> "Vidal's widow consented in writing to judgment for plaintiffs. As she now explains (without being contradicted by Monagas), she signed the written consent at the request of Juan Monagas, while confined in a clinic, and relying on his false representations regarding the contents and effect of the document."

([30]) The opinion in *Melendez* v. *Cividanes* case was written in Spanish and the phrase "la mas perfecta identidad" should have been translated "the most perfect identity" and not "a substantial identity".

After the above quotation, the Supreme Court proceeded with the statement of the facts in their chronological order.

Being aware of the "inescapably wrong" rule of this Honorable Court (Rule 39 (b)), a supreme effort is thus made in Appellants' brief (Point IV pp. 44-53) to raise a Federal question, but in the raising of the same, two false premises were made, in order to argue said point, to wit:

1. That said finding was based on testimony objected to and excluded by the trial court, and

2. That such finding was the one upon which the judgment in the present case was entered.

A. *The Finding was Based on Testimony Admitted Without Objections*

As appears from the transcript of the testimony of Vidal's widow (R. 211-214) she testified without objection that on May 16, 1924 she was in Dr. Perea's clinic by reason of an operation performed on her; that co-appellant Juan Monagas came to the clinic, several times, to see her and in his last visit Monagas and she agreed that he would prepare a document whereby her son (Neftali) was to receive his share in the partnership when he became of age in the same way as the children of Jose A. Monagas (the other deceased copartner (R. 211).

After such a statement, attorney for Monagas made his first objection, to wit:

> "Attorney Sabater: I object, because if there is any document, let it be offered. It would be the best evidence.
>
> "Attorney Alemany Sosa: We are now going to offer it; but we are discussing how the agreement regarding the document was made. Those are the preliminary steps of the contract.
>
> "Attorney Sabater: All right (R. 212).

Having tacitly withdrawn his objection, Vidal's widow proceeded to testify that she accepted Monagas' proposition; that Monagas brought the document, which she signed at the clinic without reading it.

When she was asked what the agreement, attorney for Monagas made his second objection, to wit:

> "Attorney Sabater: I object. The best evidence would be the document. It being a document subscribed by her and she acknowledges her signature, the document is the best evidence. The documents speaks for itself.
>
> "Attorney Alemany Sosa: We are asking her to explan what did the document contain.
>
> "Honorable Judge: The question is allowed.
>
> "Attorney Sabater: With our exception." (R. 212)

Then Vidal's widow proceeded to testify that she did not read the document; that the document was to arrange her son's share in the partnership of "Monagas & Vidal"; so that he would receive the same when he became of age; that when Monagas brought the document no other person was present, except possibly a nurse; that she signed the document without reading it, under the impression that it was what they had agreed; that what appeared in the document was not what they had agreed (R. 213).

When she was asked if she authorized attorney Saliva to represent her in the document and after she answered in the negative, remarking that she did not know him, attorney for Monagas made his third and last objection.

> "Attorney Sabater: I object. Are we going to commence an action for nullity?
>
> "Honorable Judge: Ruling on the question, the Court considers that as a matter of fact the witness already testified that this document was signed as stated by her, at Dr. Perea's clinic at a time when there was no other person at that place. Relying on the testimony of the

witness, the Court considers the question is immaterial. From this point of view the objection is sustained.

"Attorney Alemany Sosa: Exception. Then we offer the document in evidence.

"Attorney Sabater: No objection.

"Honorable Court: It is admitted." (R. 213)

As it clearly appears from the foregoing, the finding of the local Supreme Court as to Monagas misrepresentation regarding the contents and effect of the document was based on the admitted testimony of the widow, not objected to by any one of the Appellants herein.

The first and second objections were clearly to the oral testimony of the contents of the document, the document being the best evidence, and the third and last objection was clearly to the "question" as to whether Vidal's widow authorized attorney Saliva to represent her.

The trial ourt's ruling considering said "question" immaterial was correct, because it made no difference whether she did, or she did not, authorize attorney Saliva to represent her in said document. (*Sic*)

B. *The Finding was Immaterial to the Judgment in the Present Case.*

1. As appears from the prayer of the complaint and from the complaint itself (R. 75-79) the object of the present case is the liquidation of the partnership and the division and adjudication of the partnership's properties and of its rents and profits since dissolution; therefore, what difference would it make whether Monagas made any misrepresentation to Vidal's wife? With or without said misrepresentation the Appellee had a perfect right to obtain the judgment prayed for, therefore, said finding was neither essential nor necessary to the judgment.

2. Conceding, for the purpose of argument only, that the local Supreme Court erred in making such a finding, the judgment will nevertheless stand on the finding that the

judgment in Case No. 10416 is null and void as shown in the argument on Point II, Sub. B. (*supra*).

3. The finding as to Monagas' misrepresentation is completely irrelevant because, as stated in Appellants' brief (p. 45) the amended complaint herein does not charge the Appellants with any fraud or fraudulent conduct. Said finding was not even necessary in an action for the revendication of the interest in the Belvedere Farm inasmuch as Vidal was under no obligation to proceed first to annul the judgment in Case No. 10416 in order to have a right to revendicate said interest. *Lompre* v. *Diaz* (*supra*).

4. The judgment herein having been decided on other grounds, the findings as to Monagas misrepresentation is completely academic and did not deprive Appellants of due process.

Point V.

Beauchamp's Heirs were not Indispensable Parties Defendant in the Present Case.

It is Appellants' contention that the court below set aside the deed of sale from Beauchamp to Monagas and annulled the execution sale without the presence of Beauchamp, or his heirs who are indispensable parties in the present case (Brief 54).

Here too, Appellants make two false premises in order to argue the point, to wit: (a) that the lower Court set aside the deed of sale from Beauchamp to Monagas, and (b) that said Court annulled the execution sale in Case No. 6889.

Nowhere in the complaint filed in this case, is there the slightest allegation with reference to the deed of sale from Beauchamp to Monagas or to the execution sale in Case No. 6889.

The judgment entered by the lower Court, which was affirmed by our local Supreme Court (R. 494), only orders

the liquidation of the partnership and provides for the appointment of a commissioner, should the partners or their successors in interest fail to agree to carry out the liquidation.

Nowhere in said judgment or in the judgment of the local Supreme Court is there any decree or order setting aside any deed or annulling any execution sale.

As the object of this suit was to liquidate the partnership, under the most elemental rule of procedure the only proper defendants are the partners, if living, otherwise their heirs, and Beauchamp was neither a partner nor an heir of any one of the partners.

This being an action for the liquidation of the partnership, there was absolutely no necessity to pass upon the validity of the execution sale in Case No. 6889 or upon the validity and effect of the deed of transfer from Beauchamp to Monagas and it was only with reference to the application of the theory of *res judicata* or of estoppel by judgment, that reference was made to the illegality of said execution sale and to the effect of said deed, in the opinion of our local Supreme Court (R. 489).

Appellants also contend that because of the fact that our local Supreme Court in Case No. 783 dismissed the appeal (60 P.R.R. 763) on the ground that the heirs of Beauchamp were necessary parties in said suit, (Brief 54) they are also necessary parties in the present suit. But said argument is a *non-sequitur*. They were necessary parties in Case No. 783 because that was a suit in which it was sought to annul and set aside the execution sale and the deeds of sale executed by the Marshal to Beauchamp and by the latter to Monagas, (60 P.R.R. 763; 765) as a preliminary to the action of revendication therein prayed for. The plaintiff in said case proceeded under the theory that the execution sale and the aforementioned deeds were not void but voidable and

being so, it was impossible to obtain the annulment without the joinder, as parties defendant, of all persons who participated in the same.

This case being exclusively for the liquidation of the partnership, Beauchamp's heirs are neither necessary nor interested parties herein, because their rights, if any, could not be in any way affected by the judgment ordering the liquidation of the partnership.

Point VI.

The Court Below was Correct in Not Holding that Co-appellant Juan A. Monagas Acquired Title to Vidal's Share in Belvedere Farm by Adverse Possession.

The object of the present case being exclusively for the liquidation of the partnership, it was completely academic to decide whether Monagas acquired title by prescription to Vidal's share in the Belvedere Farm. That would have been a proper issue in Case No. 783, and as argued in Point III, 7 (c), the adverse decision in said case was not on the merits because nowhere in the complaint it was alleged the date on which the partnership was liquidated in order to justify the conclusion that the prescriptive term had elapsed.

The appellants' contention that the defense of prescription was set up in their answer (Brief 58) is absurd. How can the prescription of a right to revendicate an interest in real estate be a defense to an action for the liquidation of a partnership?

This matter was not in issue in the present case nor could it be, for even if Vidal's heirs had lost by prescription their right to revendicate their interest in Belvedere Farm, which we emphatically deny, Appellee, as heir of Ramiro Vidal, certainly has the right to know what became of all the assets of the partnership and to receive, in money or otherwise, their share in what remains after payment of all the liabilities of the partnership, and the only way to exert said right

is through the judicial liquidation of said partnership, prayed for in the complaint filed herein.

Said right has not prescribed nor has the Appellants alleged prescription of the same, neither as a defense in their answer, nor as an error in their brief.

CONCLUSION.

There is no Federal question involved in the present case and the local Supreme Court was inescapably correct in the application of the theories of *res judicata* and estoppel by judgment, and in the interpretation and application of the local laws, therefore the judgment appealed from should be affirmed.

Respectfully submitted,

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Copy of this brief was served by registered mail on Jose A. Poventud, Esq., Box 266, Ponce, Puerto Rico, as attorney for the Appellants, this twenty-fourth day of March, 1948.

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Attorney for Appellee.